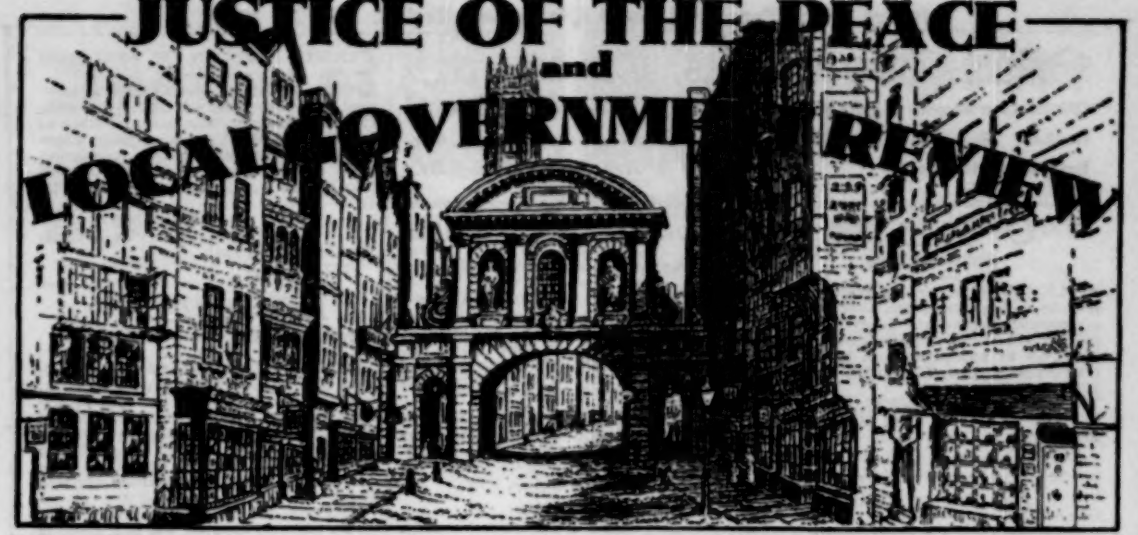

VOL. CXIV. LONDON: SATURDAY, JULY 29, 1950. No. 30

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

COUNTY OF BERKS

Assistant Solicitor

APPLICATIONS are invited from qualified solicitors with advocacy, local government and conveyancing experience. Salary Grade VII (£635 × £25—£710). Application forms with conditions of appointment can be obtained from the undersigned. Closing date August 21, 1950.

H. J. C. NEOBARD,
Clerk of the Council.

Shire Hall,
Reading.

COUNTY OF DORSET

Appointment of Assistant Solicitor

APPLICATIONS are invited from admitted Solicitors for the post of Assistant Solicitor in the office of the Clerk of the Peace and County Council.

Salary according to qualifications and experience within the scale £750 × £50—£1,000, plus a travelling and subsistence allowance in accordance with the County Scale.

The post is designated for superannuation purposes, and the successful candidate will be required to pass a medical examination.

Applications, on a prescribed form, which may be obtained from me, must be forwarded so as to be received not later than Thursday, August 24, 1950.

C. P. BRUTTON,
Clerk of the Peace and County Council.

County Hall,
Dorchester,
Dorset.
July 14, 1950.

SEVERN RIVER BOARD

Administrative Assistant

APPLICATIONS are invited for the appointment of an Administrative Assistant (Male) in the Fisheries and Pollution Prevention department. Applications must have had considerable experience in Local Government or Fishery Board work, including preparation of statistics, and preference will be given to members of the Chartered Institute of Secretaries.

The appointment is on the permanent establishment of the Board and is subject to the provisions of the Local Government Superannuation Act, 1937. Salary range £520—£610 (Grade V or Va A.P.T.).

Applications, stating age, experience, qualifications and education, with copies of not more than three testimonials should be received by the undersigned by not later than August 8.

JOHN V. MORLEY,
Clerk of the Board.

Portland House,
Great Malvern,
Worcestershire.

COUNTY PALATINE OF DURHAM

Appointment of Chief Constable

THE Durham County Police Authority invite applications for the appointment of Chief Constable of the County at a salary of £2,300 per annum, with usual allowances. The appointment will be subject to the Police Regulations for the time being in force and to the approval of the Secretary of State.

Forms of application and conditions of appointment may be obtained from the undersigned. Applications endorsed "Chief Constable" must be sent to the undersigned not later than Saturday, August 19, 1950.

J. K. HOPE,
Clerk of the Police Authority.

Shire Hall,
Durham

BEDFORDSHIRE COUNTY COUNCIL

Conveyancing Clerk

APPLICATIONS are invited for the post of Conveyancing Clerk (unadmitted) on the staff of the Clerk of the Council. The salary will be on Grade A.P.T. VII of the National scales, *viz.*, £635 × £25—£710.

The person appointed will carry out, with the minimum of supervision, the conveyancing work of the Council, and such other duties in the legal section as may from time to time be required.

The appointment is superannuable, and subject to the National Scheme of Conditions of Service.

The Council have a scheme for the provision of flats, but until available, a married officer maintaining a family in another home away from Bedford may be paid a special allowance of 25*s.* per week. Applicants with children will be interested to know that Bedford offers exceptional educational facilities.

Applications, on forms to be obtained from me, must be submitted by August 5, 1950.

J. B. GRAHAM,
Clerk of the County Council.

Shire Hall,
Bedford.
July 14, 1950.

INQUIRIES

DETECTIVE AGENCY (HOYLAND'S) (T. E. Hoyland, **ex-Detective Sergeant**); Member of British Detectives Association and Federation of British Detectives. **Divorce, Process serving, Observations, Confidential investigations** and Status inquiries anywhere. Male and Female staff. **Over 150 Agents in various parts of the country.**—1, Mayo Road, Bradford. Tel.: Bradford **26823** day or night. Telegrams: "Evidence" Bradford.

COUNTY BOROUGH OF WEST HAM

APPLICATIONS are invited for the appointment of Conveyancing Assistant. Salary £480-£570, commencing within grade according to qualifications, plus London weighting allowance £20-£30 according to age. Application forms with full particulars may be obtained from me and must be returned by August 12, 1950.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

ESSEX PROBATION AREA

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a full-time female probation officer.

Applicants must not be less than twenty-three, nor more than forty years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

Applicants should be able to drive a car.

The successful applicant will be required to pass a medical examination.

Applicants, stating age, present position, qualifications and experience, together with copies of not more then three recent testimonials, must reach the undersigned not later than three weeks after the appearance of this advertisement.

R. E. NEGUS,
Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

BOROUGH OF MIDDLETON

Town Clerk's Department

APPLICATIONS are invited for the appointment of Committee and General Clerk at a salary in accordance with A.P.T. Grade I (£390 × £15—£435). Applicants should have experience in the office of a local authority and possess a knowledge of committee procedure.

The appointment will be subject to the Scheme of Conditions of Service of the National Joint Council, to the provisions of the Local Government Superannuation Act, 1937, and the successful applicant passing a medical examination.

Applications, stating age, present appointment and experience, together with copies of two testimonials, must be received by the undersigned by August 14, 1950.

Canvassing, directly or indirectly, will disqualify.

FRANK JOHNSTON,
Town Clerk.

Town Hall,
Middleton,
Lancs.

SITUATIONS VACANT

WARDEN and Matron required for Youths' Probation Hostel, must be fully experienced social workers, and preferably without children. Salary £550 (joint) less £148 for full board and lodging. Applications in writing to Secretary: West Ham Hostel for Youths, 136, Earlham Grove, Forest Gate, E.7.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

VOL. CXIV. No. 30. Pages 426-441

LONDON : SATURDAY, JULY 29, 1950

Offices: LITTLE LONDON, CHICHESTER, SUSSEX.

[Registered at the General Post Office as a Newspaper]

Price 1s. 8d.

NOTES of the WEEK

Amending an Indictment

The Court of Criminal Appeal has decided, as reported in *The Times*, July 19, 1950, that a judge has power under the Indictments Act, 1915, s. 5, to allow an indictment to be amended notwithstanding that it is not bad in law on its face. At the trial in which the point arose there were in the indictment charges of obtaining money by false pretences. At the close of the case for the prosecution objection was taken that there was no evidence of obtaining money, and the prosecution asked for and were granted leave to amend those counts by altering in each count the sum of money to " a valuable security, to wit a cheque " for that sum.

The Court of Criminal Appeal supported the trial judge's decision, refusing to accept the view that to be " defective " an indictment must be one which charged no offence in law and was, therefore, bad on its face. The Court emphasized, however, that counsel for the prosecution is responsible for the correctness of an indictment and no counsel should open a criminal case without having satisfied himself on that point. He should make any application for amendment before the accused was arraigned and not, as in this case, at the close of the prosecution's case.

Magistrates' Jurisdiction after Divorce

We are frequently asked to advise readers whether magistrates have jurisdiction to entertain an application under the Guardianship of Infants Acts, 1886 and 1925, where the parties have already been divorced. Basing our opinion on cases such as *R.* v. *Middlesex Justices, Ex parte Bond* (1933) 97 J.P. 130, we have advised that where the Divorce Court is seized of a matter, the jurisdiction of the justices is ousted, and if there is any doubt about it, it would be wise to refer the parties back to the High Court.

We have now received particulars of a case which has occurred which indicates a line of action which, if followed, solves all questions of jurisdiction in a common-sense, practical way.

When the parties were divorced, the petitioner (the husband) did not pray for the custody of the children of the marriage and that issue was not therefore dealt with in the High Court and no order was made affecting the question of the custody and maintenance of the children. The wife subsequently sought advice regarding the children. She could, of course, have undertaken the costly and somewhat lengthy course of obtaining an order in the Divorce Court, an order not easily enforceable. Instead, her solicitor communicated with the Senior Registrar of the Divorce Division, and as a result that official wrote to the clerk of the magistrates' court concerned, intimating that there was no objection to the justices dealing with the question of the custody and maintenance of the children. Thus, cutting through technicalities and a highly complicated argument concerning jurisdiction, emerged a simple solution to the problem.

Whilst on this question of jurisdiction, we recall an adoption application made a few years ago in relation to an infant whose parents had been divorced. Custody had been awarded to one party and the learned judge had ordered that no proceedings were to be taken in respect of the child without further order of the High Court. The adoptive parents were of small means and could not afford adoption proceedings in the High Court. They were advised to go to the High Court and obtain the directions of the judge. Without any summonses or formalities of any kind they were seen and the learned judge wrote across the decree words giving the juvenile court permission to proceed with the adoption application, signing his name at the foot. These two examples provide a good answer to critics of the slowness of our legal machinery, although, of course, we realize that they are of an exceptional nature.

Economy in Approved Schools

There has been criticism from time to time of the very high cost of running some of the approved schools. That the authorities are not entirely deaf to such criticism is perhaps shown by the issue of H.O. Circular No. 136/1950 in which managers of approved schools are asked to give careful consideration to certain measures of economy, and to carry them out so far as the circumstances of each school permit. The measures suggested include an extension of the practice of arranging for boys and girls to help in household, laundry and similar duties, in food production, and in school maintenance work of suitable kinds. It is also suggested that necessary school furniture may sometimes be obtainable from other schools, and that the chief inspector can be consulted for information on this point. Unnecessary after care work and visits by the staff of approved schools which can be covered by local welfare officers are deprecated, as is unnecessary expenditure on school camps involving long journeys. Modified forms of camping with small parties in areas closer to the schools are suggested.

There are to be no new housemaster or housemistress posts except such as may be filled by the first engagement of persons with a H.O. certificate in the residential care of children endorsed to show that the holder has specialized in approved school work, or by the engagement of suitably qualified housemasters or housemistresses who have lost their employment through the closing of a school.

Staff ratios are being reviewed in accordance with recommendation (4) of the eighteenth report of the select committee on estimates.

The circular ends with a reference to the importance of doing everything possible for headmasters and others who are displaced by the closing of schools, and a recommendation that when vacancies are to be filled sympathetic consideration should be given to the claims of those so displaced.

Restrictions on Building—Unpaid Labour

In the case of *R.* v. *Bather*, reported in *The Times* of July 18, 1950, the Court of Criminal Appeal set aside fines of £200 each imposed at the London Sessions on an architect and on a limited company for an alleged breach of the building regulations, and substituted in each case an absolute discharge.

The report does not quote the relevant regulations or give the date of the alleged offences. The basis of the prosecutions was, of course, Defence Regulation 56A, and it was alleged that work had been done in excess of the permitted value, which in this case was £660. The excess alleged was £180. The appellant said that in arriving at the total figure the prosecution had taken into account work which he, the appellant, had done as a bricklayer during week-ends, and he claimed that this exceeded £180. The Ministry of Health had issued a circular 104/48 to local authorities stating that the value of such work should not be taken into account, but it was said by the prosecution that under the relevant orders the value of unpaid labour was to be taken into account and that the circular had not the effect of law.

The Lord Chief Justice is reported at this stage to have said: "Let us get down to brass tacks, if I may use that phrase. One does not talk about a man's own work on his property as 'unpaid labour.' It was not disputed that the appellant did the work himself. Does the Minister really say that that is not to be taken into account and deducted?"

Counsel for the prosecution agreed that it should be.

In giving judgment the Lord Chief Justice said that, whatever might be the strict law, the Minister sent out a circular to local authorities which made it completely clear that the value of work such as that done by the appellant personally should not be included in computing the value of work done on the site for the present purpose. It was unfortunate that the circular had not been brought to the notice of the deputy chairman at quarter sessions. The matter should have been before the jury. *One of the reasons that a jury was there was that if they thought a man was not being fairly dealt with he should be acquitted.*

The italics are ours. The use of these words by the Lord Chief Justice shows clearly that he attaches importance to the jury as an institution for securing that real justice is done.

Inspection of Remand Homes and Approved Schools

For the purpose of inspecting children's homes and certain other purposes, inspectors of the children's department, Home Office, are already organized in six territorial groups, each with a superintending inspector in charge. The arrangement is to be extended to cover the inspection of remand homes and approved schools. The medical inspectors, however, will continue to work from central headquarters at Princeton House.

The above information is given in H.O. Circular No. 138/1950, to which is attached an appendix showing the territorial organization of the inspectorate. The purpose is to facilitate contact with local authorities and voluntary organizations. The circular sets out the returns from approved schools and remand homes which should still be forwarded to the chief inspector at Princeton House. Others should be sent, in future, to the local superintending inspector. The circular has been issued to the councils of all counties and county boroughs in England and Wales and copies have been sent to headmasters and headmistresses of approved schools for their information.

Probation in Hull

The City and County of Kingston-upon-Hull is one of the places in which juvenile crime has shown a marked decrease. The report of the probation committee for the year 1949 refers to a considerable reduction, the figures being the lowest for ten years. Probation has been very freely used, as is shown by the fact that in the juvenile court 42.32 *per cent.* of all offenders were placed on probation and 24.12 *per cent.* were dismissed under the Probation of Offenders Act, discharged absolutely, or conditionally. These figures are remarkably large, but the probation committee goes on to say that the justices take a firm stand when juvenile probationers fail to take advantage of their opportunity, and do not hesitate to send such offenders to approved schools.

In contrast to the figures for juveniles, the percentage of adults placed on probation is low, being only 2.34 *per cent.*, with 1.43 *per cent.* dismissed under the Probation of Offenders Act, discharged absolutely, or conditionally.

The percentage of probationers completing their probation satisfactorily is, and has been for some years, high; such figures, however, do not convey very much unless we know what is the standard adopted and can also see the results of a follow-up for a few years.

A useful feature of the report is a table showing the case loads of individual officers. These do not appear excessive, and evidently the probation committee is on the watch for any signs that any officer's burden may become such as to prevent thorough and efficient probation work.

There is a curious slip in the paragraph dealing with supervision cases under the Money Payments (Justices Procedure) Act, 1935. Their report states: "Under the above Act, the Justices have the power to place under the supervision of a probation officer persons under twenty-one years who have been fined and allowed time in which to pay." There is, of course, power so to deal with defaulters of any age, under s. 5. It is s. 6, the marginal note to which is "Fines, supervision of defaulters under twenty-one obligatory," which deals with defaulters under twenty-one years of age.

Punishment for Gross Indecency

In the case of *R.* v. *Hunt* [1950] 2 All E.R. 291, the Court of Criminal Appeal decided that where two men are charged with committing acts of gross indecency it is not necessary for the prosecution to prove that there was actual physical contact between them. In this case two men were indulging in a grossly indecent exhibition in a shed, but there was no contact. The point in the case to which we wish to call attention is the matter of sentence. They were tried at quarter sessions and the deputy chairman is reported as saying that the bench took a very serious view of the case and he sentenced each man to twelve months' imprisonment. In the Court of Criminal Appeal the Lord Chief Justice said that these sentences were not justified by the offence, *because there was no element of corruption in it.* The place where the act was performed was not a public urinal. It was late at night and in a shed. It was an offence against the statute, but the court thought that justice would be done if each sentence was reduced to one of three months' imprisonment to run from the date of conviction.

The Institute of Weights and Measures Administration

This important body, which under the former title of "The Incorporated Society of Weights and Measures" dates back to 1893, held its annual conference, for 1950, in London recently. Amongst other proceedings at the conference papers were read on various topics of interest to members. The technical nature of some of these makes them less of general interest to our readers as a whole than would, we think, justify any reference to them here, but their value to members of the Institute is undoubted. There was, however, a paper read by Mr. W. Roger

Breed, D.P.A. (Lond.), who is the chief inspector of weights and measures for the county of Dorset, and his subject was " The administration of the Food and Drugs Acts in English counties." He outlined the development of the present day legislation on the subject, pointing out that before 1872 the onus of detecting adulteration of food and drink was left to individual purchasers. As the modern system has developed it is the inspectors of weights and measures who have, in the main, been given the task of making the laws known to traders and of enforcing them when necessary. In 39 of the 48 English counties (excluding London) the authorities rely on these inspectors for the proper administration of the Food and Drugs Acts. It is suggested, with some force, that since these inspectors have to visit shops and other premises in their capacity as weights and measures inspectors, it avoids unnecessary and irritating duplication of visits if they are concerned with the Food and Drugs Acts. We cannot attempt here to deal with all the points made by Mr. Breed in this connexion.

Having dealt with the past and present he proceeded to offer some criticisms of the present state of the law as settled by certain decided cases, and offered suggestions for what he thought would be improvements on the present law. He said, for example, that the fact that milk as it comes from the cow can be twenty-five *per cent.* deficient of its presumed fat content without legal complaint being possible is no consolation to the unfortunate purchaser who receives such milk. He suggested two alternatives, either the fixing of an absolute standard of quality or the bulk purchase of milk on a quality basis, the price to producers varying with quality. Either system would, he thought, lead to an improvement in quality.

He dealt also with the difficulties of local authorities who have to incur considerable expense in having certain products analysed, and suggested that the national exchequer should contribute in suitable cases where the matter was of more than local interest. He complained of the delay in making known to those interested the result of relevant cases which go on appeal to the High Court, and suggested that the Ministry of Food might take action to disseminate this information.

We do not pretend to have done anything like full justice to Mr. Breed's very interesting paper. It may be that copies of it can be made available to any of our readers who would like to read it in full, but of this we are not sure.

Leasehold Law

Several passages in the final report of the Leasehold Committee (Cmd. 7982) are of interest to local authorities, from whom written statements of evidence by, among others, the Urban District Councils Association and the Association of Municipal Corporations, were received by the committee.

In the majority report (there are two minority reports, a supplementary report and a chairman's note disagreeing from some recommendations of the majority interim report), the committee record the attitude of Government departments and other public authorities towards " leasehold enfranchisement," a term which has for many years been used to describe the principle that leaseholders should be enabled to become freeholders by compulsory purchase of the fee simple of their holdings, together with any leasehold interests therein superior to their own. Naturally, the departments and authorities approach the question from the point of view of their different responsibilities. Some are responsible for general policy in the field of planning, where the leasehold principle plays a vital part, while others are large landlords for purposes directly associated with statutory functions such as housing. Government departments concerned were found by the committee to be unanimously opposed, usually for reasons of management and planning, to any measure of enfranchisement, and this view was shared by the principal associations representing local authorities and by large individual local authorities.

Discussing security of tenure for residential tenants as an alternative to leasehold enfranchisement, the committee envisaged " at least a possibility that the result of the forthcoming reassessment under the Local Government Act, 1948, will be to bring an increased number of dwellings outside the rateable value for control under the Rent Acts." Present maximum rateable value for protection under the Rent Acts is £100 in London and £75 elsewhere, as laid down in the Act of 1939, s. 3, and is high enough to include the majority of residential lettings. An increase of rateable value above the maximum would leave tenants with only such security as the terms of their leases provide. Such limited evidence as the committee received did not point to the existence of any widespread or serious hardship among the tenants of properties above the maximum, and they took the view that in the absence of such evidence it is undesirable to recommend the extension to them of control on the lines of the Rent Acts.

Reference is made in the present report to special provisions recommended in the majority interim report to meet the case where possession of premises is sought for their own occupation by various special classes of landlords such as local and other public authorities. If the " just exceptions " now proposed are accepted, those landlords should, the present majority report states, be able to obtain possession of premises required for the purposes of their various distinctive activities by means of the general rule permitting a landlord of five years' standing or more to defeat a claim of renewal by giving one year's advance notice of his intention to the tenant provided he required the premises for his own occupation.

Powers given to local authorities by the Housing Act, 1936, ss. 9 and 10 (power of local authority to require repair of insanitary house, and enforcement of notice requiring execution of works), were felt by the committee " on the whole, to represent the fair and reasonable limit to which legislation can go " as regards adequacy of the means of enforcement of a landlord's repairing obligations at present available to a tenant by statutory procedure. The committee commented that at the present time some neglect of minor repairs is doubtless due to the fact that the rents of house-property generally are controlled on a rigid basis, making inadequate provision for present day building costs. This seems relevant to their mention of a statutory requirement that when a house is unfit for habitation a local authority shall make an order for the execution of works unless they are satisfied that it is not capable of being rendered fit at a reasonable expense, and of cited decisions by the courts that in exercising their wide discretion an authority may consider what return a landlord could get for his outlay.

Disagreement is expressed by the committee from a view that the existence of town and country planning legislation is sufficient protection against undesirable changes of user of premises, and that restrictive covenants should no longer prevent changes of user for which planning permission has been obtained. The committee thought, however, that it would be reasonable to give explicit power to the Lands Tribunal constituted under the Lands Tribunal Act, 1949, in deciding whether to discharge or modify covenants, to have regard to the grant of planning permission under the Town and Country Planning Act, 1947. Another of the " miscellaneous proposals " in c. 8 of the Leasehold Committee's majority report is that parts of the Housing Acts, 1936 and 1949 dealing with leasehold matters should be consolidated, if and so far as their recommendations are adopted, with provisions from certain other enactments in a single new Landlord and Tenant Act.

PROOF OF CONDONATION

When the Matrimonial Causes Act, 1937, extended the powers of courts of summary jurisdiction by adding adultery to the grounds on which an order could be made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, it not unnaturally imported a provision similar to that found in the legislation governing procedure in the High Court, that a court should not make an order on the ground of adultery unless satisfied that the applicant had not—amongst other matters—condoned the adultery. The doctrine of condonation is one which was established by the old Ecclesiastical Courts, and has subsequently been examined by the courts on many occasions. It was defined in *Keats* v. *Keats and Montezuma* (1859) 1 Sw. & Tr. 334, 347, as " a blotting out of the offence imputed so as to restore the offending party to the same position he or she occupied before the offence was committed." The case of *Cramp* v. *Cramp and Freeman* [1920] P. 158 makes it clear that " forgiveness " in the ordinary sense of the word is not essential to the proof of condonation, which, in the words of McCardie, J., is " a conditional waiver of the right of the injured spouse to take matrimonial proceedings, and is not forgiveness at all in the ordinary sense."

The most usual evidence of condonation is the resumption of sexual intercourse, and where there has been such a resumption an injured husband must be presumed to have condoned the offence even though there has not been " forgiveness " in the ordinary sense, *Cramp* v. *Cramp* (*supra*). The only proviso to this is that if the resumption of intercourse is obtained by false statements, as in *Roberts* v. *Roberts and Temple* (1917) 117 L.T. 157 (where the wife falsely stated that she was not pregnant) this resumption will not amount to condonation : similarly, a husband who condones his wife's adultery (of which he is aware) with one man does not thereby condone her adultery (of which he is not aware) with another man, *Bernstein* v. *Bernstein* [1893] P. 292, for in such cases it is the reality and not appearance of condonation which must be inquired into.

Although such weight is attached to sexual intercourse in proving condonation it was recognized in *Keats* v. *Keats* (*supra*) that it is not essential to re-instatement. In that case, however, Lord Chelmsford seems to have had in mind some physical reason, illness, etc., which would preclude the resumption of intercourse, and clearly in such circumstances the absence of sexual relations could not prove the absence of condonation. A much more difficult position arises where the resumption of intercourse is impossible on account of the *de facto* separation of the parties, *e.g.*, where the husband is serving in the Forces. The courts have repeatedly recognized the possibility of condonation in such circumstances, but nevertheless there is apparently no recorded case in which the High Court has found that the condonation has been proved. In *Crocker* v. *Crocker* [1921] P. 25 (C.A.) it was held that forgiveness expressed by the husband in a letter to his wife did not amount to condonation as there was no restoration of the wife to the status of a wife. In this case, the husband, who was serving abroad at the time, expressed his forgiveness, but did not restore the allowance and allotment to his wife ; and the children, who had been taken away from her, were not restored to her. In *Jones* v. *Evans* [1944] 1 K. B. 583, the wife of a soldier serving overseas gave birth to an illegitimate child ; the husband did not stop the Army allowance paid to his wife, and stated in a letter that he had decided to forgive her to a certain extent until he had the luck to get home. The justices held that as there had been no break between the wife and husband, other than that due to war service, they were not living separately and apart, and the wife was not therefore a " single woman " for the purpose of the Bastardy Acts. On appeal by Case stated the Divisional Court held that the action taken by the husband did not amount to condonation. In *Hockaday* v. *Goodenough* (1945) 109 J.P. 237, the wife of a soldier serving abroad gave birth to a child, and confessed her adultery to her husband. He thereupon ceased to communicate with her, but he made statements to a third party who had seen the wife that he found it much easier to forgive than to forget, but that for the sake of the children he would try to live it down and go on as if it had not happened. It does not appear from the report of the case whether or not he at any time stopped the allowance. The Divisional Court again held on appeal by Case stated that there were no facts on which the justices could conclude that the husband had not only forgiven his wife but had re-instated her in the position of his wife. Therefore there was no condonation, and the wife was held to be a single woman for the purpose of her application under the Bastardy Acts. With every respect to the High Court one may perhaps be forgiven for feeling that the unfortunate position of the wife, unable to obtain support, if condonation were established, for what on all common sense grounds was an illegitimate child, may have been present in the mind of the court in reaching the decisions in these two cases.

In *Fearn* v. *Fearn* [1945] P. 241 there was the same background of the wife who committed adultery while her husband was serving abroad ; the husband wrote letters expressing his forgiveness and stating that he would regard the illegitimate child, the issue of the adultery, as his own. He did not stop the wife's allowance and correspondence continued between them. Later as a result of letters from other people which tended to show that the wife had not told him the whole truth, he petitioned for divorce. His petition was dismissed by the Commissioner on the grounds of condonation but the Court of Appeal held that condonation was not proved. In his judgment, Bucknill, L.J., pointed out that the crucial question was whether the conduct of the husband amounted to a re-instatement of the wife ; " did it amount to conjugal cohabitation or the restitution of conjugal rights as far as it was possible for a husband fighting in Italy to be in a state of conjugal cohabitation with his wife in England." He pointed out that in the circumstances of the case there had been no reinstatenent of the wife because the husband did not at any time renounce her, and there was no broken " conjugal cohabitation which was restored." On this point it should be noticed that subsequently in *Wilmot* v. *Wilmot and Martin* [1949] 2 All E.R. 123, Wilmer, J., observed that there may be merely a notional displacement which is immediately made good by re-instatement on the part of the husband. To return to the case of *Fearn*, Tucker, L.J., agreed with Lord Justice Bucknill, but raised the question : what more could the husband have done to re-instate the wife in the position from which she had deposed herself ? He continued " the answer may be that the circumstances of the husband's absence on active service rendered it impracticable for him completely to condone his wife's adultery until he had returned to this country and was in a position to take stock of the situation before taking an irrevocable step."

From the cases examined above the conclusion emerges clearly that a wife who sets up condonation as a barrier to an application by her husband in such circumstances has a very heavy burden of proof placed upon her. On this matter, Bucknill, L.J., said in *Fearn* v. *Fearn* (*supra*) " Condonation being an absolute bar . . . I think it reasonable to assume that the law requires a high degree of proof that the innocent husband has not only intended to waive the offence but has manifested that intention by restoring the guilty wife to her former position."

It may well be that a case along the lines of those noted above will shortly be heard by the High Court as a result of a decision by a metropolitan magistrate in which he held that condonation was not established although in some ways the proof proffered to prove this went further than in any of the above cases. Having received a letter from his wife admitting that she was pregnant as a result of adultery, the husband immediately ceased writing to her, stopped the Army allowance, and saw his commanding officer with a view to obtaining a divorce. The wife again wrote begging for forgiveness, and after a short while the husband wrote back saying that he forgave her, that he would restore the allowance and would stop the proceedings for divorce. He asked that the child should be adopted. The wife at first objected to this but later, in the course of the regular correspondence which then passed between them, she agreed to do this. Shortly before returning home—for reasons which were not revealed to the court—the husband changed his mind, and on reaching England he did not see his wife but straightway took out a summons against his wife on the grounds of her adultery. In the course of the argument as to whether or not condonation had been proved, reference was made to the above cases and to *Mummery* v. *Mummery* [1942] P. 107, in which Lord Merriman (then sitting as a judge of first instance) said: "... I doubt whether any judge could give a completely exhaustive definition of cohabitation ... at least a resumption of cohabitation must mean resuming a state of things—that is to say, setting up a matrimonial home together." It was argued that this was precisely what had happened in this case: the husband and wife had resumed the same state of things which had existed before the wife's adultery and accordingly condonation was proved.

The learned magistrate said that in his opinion he was not satisfied that the wife had discharged the heavy burden of proof which the decided cases placed upon her, and the husband's summons for adultery must accordingly succeed.

BETTING ON LICENSED PREMISES

[CONTRIBUTED]

The report at p. 438 *post*, of the conviction of a licensee under s. 3 of the Betting Act, 1853, is of interest in view of the evidence so recently given by eminent lawyers and others to the Royal Commission.

The detailed evidence given by prosecution witnesses will be recognized by all whose work brings them into magistrates' courts as being characteristic of this class of case, and it exemplifies the difficulties with which the defence is almost invariably confronted in these cases. Police evidence almost invariably extends over a period of several weeks, and by the time the case comes on for hearing, the period of observaton is long past. If, as in this case, the licensee asserts that no incidents worthy of his attention have taken place then the meticulous detailed evidence of the police can be met merely by a general denial which, not unnaturally, appears unconvincing.

It will be seen that in the case reported the justices obviously took a very grave view of the matter, as they were clearly entitled to do in the present state of the law, and it was undoubtedly a case in which severe punishment had to be awarded. It is, however, perhaps permissible to consider in some little detail the nature of the offence and the possible repercussions upon the licensee of a conviction being recorded against him.

It appears from the evidence that a number of persons, no doubt of modest means, utilized the services of an elderly woman to get their bets placed and, doubtless, the elderly woman received some form of reward from the bookmaker when she took the bets and the money to him but, as is well known, if the matter had been tackled in a different way and the bets placed by telephone no offence would have been committed. It must be borne in mind, too, that at a later stage the licensee will undoubtedly appear before the licensing justices in his division in order that they may consider whether or not his licence should be renewed to him. It is well known to the writer that this is a question which causes licensing justices acute anxiety, for there is a school of thought to which many level headed justices belong, which takes the view that when, as in this case, a licensee has had substantial punishment meted out to him, it is unjust that he should be put in jeopardy of suffering an infinitely greater punishment, namely, deprivation of his means of livelihood. It will be appreciated that when, as in this case, a licensee is elderly, his chance of obtaining another licence, if his present licence is not renewed to him next February, must be extremely remote, and it may well be, though the writer has no personal knowledge of this case, that the defendant here has spent his life in the licensed trade and is quite unsuited to earn his living in any other capacity.

It may be that the licensing justices who will consider this case next February belong equally conscientiously to the school of thought which takes the view that a licensee must have a blameless character and conduct his business in a manner which can stand the closest investigation. With such a bench it is improbable that, in the face of such clear prosecution evidence as was available in this case, the licence would be renewed to the defendant licensee. It may indeed be that the defendant will not survive as a licensee until next February, for it is common form in tenancy agreements of licensed premises for provision to be made for termination of the agreement in the event of the conviction of a licensee.

The writer has stressed these aspects of this case because the facts proved unquestionably indicate a complete disregard of a statutory provision by the licensee and the reaction of all thinking persons must be that such conduct cannot be condoned. It is because the law itself on this subject is, it is submitted, so unreasonable that it has been thought right to detail the facts at length.

It is the sincere hope of the writer that the Royal Commission will favour an amendment of the law in this respect and that Parliament will take the necessary action to endorse such opinion. Until that date arrives is it too much to hope that when the police acquire evidence that licensed premises are being used for betting purposes they should give the licensee warning of the fact? In cases of this nature it cannot be too strongly stressed that what may be very obvious to a police constable on the customer's side of the bar, with nothing to do except to keep observation, is not necessarily obvious to a licensee who is probably understaffed and overworked, and may well suffer the additional handicap of having a crowd of customers pressing to the counter whilst he tries to carry on two or three simultaneous conversations.

PROBATION: YESTERDAY AND TODAY

By S. R. ESHELBY, *Principal Probation Officer, Essex.*

The Probation of Offenders Act, 1907, defined the probation officer's duty as, *inter alia*, " to advise, assist and befriend (the probationer)." These words were omitted from the first draft of the Criminal Justice Act, 1948, but at the instance of the probation officers themselves they were included in sch. 5 of that Act in the form " It shall be the duty of probation officers to supervise the probationers and other persons placed under their supervision and to advise, assist and befriend them." In spite of the profound changes in material conditions and mental and spiritual outlook, as well as the changes effected by advances in knowledge since 1907, it was felt that the cardinal duty of a probation officer was still adequately defined by the words " advise, assist and befriend," which today, although they have lost the revolutionary impact they must have had when first pronounced, still inspire every probation officer in his task by their simple statement of the relationship which the law says should exist between the probation officer and those placed under his supervision. The purpose of probation is, by inference, equally clearly defined in s. 3 (3) of the 1948 Act as, " to secure the good conduct of the offender and to prevent a repetition by him of the same offence or the commission of other offences." Both aim and method are then concerned with the individual offender, and the law looks primarily to the probation officer as an individual to accomplish the end. There has, however, from the 1907 Act onwards, been a clear recognition by Parliament that the probation officer in " advising assisting and befriending " those under his supervision should seek the assistance of those in a position to help, and prescribes in the Probation Rules, 1949, that he " shall encourage every person who is under supervision or towards whom or in relation to whom he has otherwise a duty to perform by virtue of any Act of Parliament or of these rules to use the appropriate statutory and voluntary agencies which might contribute to his welfare, and to take advantage of the social, recreational and educational facilities which are suited to his age, ability and temperament." To state the position in its simple essentials, Parliament has defined the relationship of a probation officer to his probationer as that of a friend, and has enjoined the probation officer to use any person, society or agency in a position to help reform or assist the person under his supervision, but is silent as to how he shall do his job.

The pioneers of probation, living in an uncomplicated age when the rigid Victorian standards of conduct were still fashionable, interpreted their duty in a simple way appropriate to their day and generation as the substitution of good for evil. Largely by personal suasion and religious influence the offender was urged to eschew evil and to do good, and, in those days when respectability counted for a good deal more than it does today, and the churches had not entirely lost touch with the masses, it worked. It should be remembered though that it was only the most amenable offenders, and of them those who had committed comparatively trivial offences, who were placed on probation. The rest were fined or sent to prison, reformatories or industrial schools. The probation officer today deals habitually with those found guilty of serious offences by courts of record as well as at petty sessions, and it is not uncommon to place under his care criminals with several previous convictions. This alone would bring about a change of technique, but when allied with the profound changes in environment to which we are all subject today as compared with say 1914 or even 1938, succeeding generations of probation officers must have changed their methods else the system would have perished of inertia. Yet, it must be urged, the changes are not fundamental ; they are a variation of the original theme " to advise, assist and befriend."

Even with juveniles, the probation officer of today is dealing with a very different boy or girl as compared with the youngster of forty years ago when the school leaving age was thirteen, and the " half-time " system whereby the boy or girl was expected to earn his living at twelve was prevalent, at least in the North. To the sophisticated schoolboy of today the teaching of those days would appear crude and unappetising indeed, and what he would think of the discipline is hard to imagine. Little wonder then, that the technique of the probation officer has altered accordingly. Incidentally, can it be that the decline in Sunday School attendance experienced on all sides is due to the possibility that Sunday Schools are unable to keep pace with day schools in equipment, technique of teaching and interest, leading to their being utterly despised by the child when compared with the standards he has been taught to expect by his secular education ?

For some years now the probation officer has, by and large, been practising the indirect approach to his case ; the person under supervision is still the object of his attack, but instead of the frontal assault largely practised by his predecessor, he often goes to work more subtlely and attempts to reach his objective by infiltration and a series of enveloping movements. Nowadays both children and adults are conditioned to this kind of approach, in formal education in schools and in informal education of the youth clubs, community centres, cinema and wireless. In some way or other every delinquent, young or old, is at variance with himself and his environment, and the probation officer conceives his job as discerning the nature of this variance and making the appropriate adjustments of the delinquent to his environment and the environment to the delinquent. The probation officer is not a psychologist nor is he psychologically trained, but he is trained in the psychological approach to problems of human behaviour, which is simply to attempt to find out the causes of trouble and then to try to remove or modify them, and in doing so he uses social methods only, leaving any deeper therapy called for to the psychiatrist. Now this is not to say that the probation officer excludes exhortation and condemnation, appeal to will-power, sense of honesty, fair-play, patriotism, and the well-tried armoury of all those who seek to change mankind, and indeed in some cases little more than this is needed to effect a cure. With others, however, it is plain that the problem is too complex to yield to so blatant an attack and then the probation officer has to use his skill and cunning in winning his way more obliquely. Largely by trial and error he has to find the chink in the armour of indifference, hardness or downright antagonism sometimes worn by the offender. Take for example an adolescent girl who was completely defiant to the probation officer and refused to co-operate in any way until chance revealed her real interest in good music. An invitation by the probation officer to accompany her to a promenade concert followed by several more visits to similar concerts, put her inside the girl's defences and led to her reform. The tough youth has been known to submit himself to the civilizing influences of a youth club because by joining he thought he was defying his probation officer who had cunningly advised him not to join !

More and more, however, the probation officer is looking upon his work as a specialized branch of family case work.

If psychology has done nothing else, it has at least reminded us of the paramount importance of the child's and indeed the adult's relationship with his family, and how any defect here is reflected in conduct in many ways. Every inquiry into juvenile delinquency points to defective family relationships as a prime cause of delinquency, and the empirical methods of the probation officer have led to a similar conclusion. If a child can be made happy at home he can be considered cured of his delinquency, and so the probation officer's task is equally with the family as with the youngster under supervision. Using a direct frontal attack, where called for, or a more subtle approach in the difficult case, he perhaps persuades mother to be less possessive in her attitude to her son and give more attention to her husband who is jealous of his son, though he won't admit it, even to himself, and is consequently too harsh in his treatment of him. If there are other brothers and sisters, their attitude to the delinquent may have to be adjusted as well as the parents' attitude to them as compared with their attitude to the delinquent. The ramifications of family relationship seem endless, and any attempt at modification calls for the courage of a lion and the guile of a serpent, yet, unless this source of much trouble is tackled there is often little hope of a permanent cure. It is because probation is the only method of treating delinquents so far devised which attempts to deal with a delinquent *and his environment* that makes it so worthwhile. Furthermore, because of this conception of his job, the probation officer is prepared to vary his technique to suit changes emerging in each fresh generation as well as the adaptations called for by local variations due to differences in wealth, occupations, rural or urban surroundings and the like.

From time to time one hears the fear expressed, and sometimes by probation officers, especially the older ones, that probation officers are too psychologically minded and are in danger of losing the missionary spirit of the pioneers. Of all the social services in this country, indeed, of all professional services of every kind, the probation service is probably the most homogeneous. Of the thousand or so officers in England and Wales every officer knows more than half, at least by name, and many of them personally. A very active professional association provides opportunities for attending an annual national conference and frequent branch conferences in every part of the country. The organization of the service into combined areas on a county basis further ensures that officers have frequent opportunities for meeting their colleagues, and promotes uniformity of practice and interchange of views within each combined area service. Now this kind of gregariousness among probation officers ensures the swift circulation of ideas and ideals and the consequent discounting of wild ideas. Let it be admitted that the new recruit to the service fresh from training, is well-indoctrinated with the latest theories of psychology and psychiatry; he has, however, to test these theories on two anvils, the experience of his colleagues, and his own experience of practice. There is a substantial proportion of probation officers and probably always will be who prefer well-tried, old-fashioned methods, and largely perhaps by reason of their personality they are often successful case-workers. These men and women never allow the service to take its feet too far off the ground, and are invaluable in demonstrating to the new officer that there are many roads to success in working with human material. They are a salutory reminder, too, that psychological maturity and personality are just as important in the probation officer as in the probationer, and perhaps count more than the psychologist is prepared to admit in reforming character.

But there is an additional safeguard. As opposed to the psychiatrist and even to many social workers, the probation officer is called upon to undertake the supervision of a case for a specified term, and during this period his Case Committee supervise his care of the case, demanding regular progress reports, and, if they are wise, reports of the nature and purpose of the treatment. Unlike the medical man, the probation officer cannot discharge his case as incurable or unresponsive to treatment; so long as he is under supervision he has to do something with him and if one line fails he has to try another, and another until he meets with success or failure. The keen Case Committee will soon prevent a probation officer from overriding his hobby-horse, psychological or otherwise, and will teach him that a common-sense approach is in many cases all that is required.

So long as the magistrates with their broad outlook, intimate contact with the work-a-day world and freedom from bureaucratic control, guide and direct the probation service, probation officers will continue to interpret their duty to "advise, assist and befriend" in the way best fitted for each succeeding generation, keeping a little ahead of the uninformed, but not so far outstripping public opinion that they lose touch with reality.

ORNAMENTAL ROADSIDE STRIPS

Horse riding is wholesome not merely to the liver but also for the public, whose interest it is that horses shall not become extinct. But like other wholesome exercises it should be followed only in a proper place, and the proper place is not ornamental strips beside a road. There have, we believe, been a few byelaws made under the caption "good rule and government" for the purpose of protecting these ornamental strips in boroughs or counties where they exist, and a revised form has now been settled by the Warwickshire county council, at the request of the urban district council of Solihull, and, having been confirmed by the Home Secretary, will apply in that urban district. As this form may become a precedent, it will be useful to consider certain points upon it. First, the kind of grass strip to which it will apply. For centuries after made or metalled roads had been introduced, there was commonly an unmade strip on each side, between the roadway proper and the boundary; on many country roads this still exists, and even today is important for road drainage and a variety of highway purposes. It descends from the old-fashioned roadside waste, of manorial law and highway law. Traditionally this is linked to the old presumption that a highway comes into existence by the landowner's dedicating a strip of land to public use. Where the *via trita* is foundrous, as often happened in medieval times, persons using the highway have a right at common law to deviate on to adjoining land. The orthodox view is that landowners dedicating a highway commonly left beside the *via trita* a strip wide enough for this deviation to take place without encroaching on cultivated land. This strip would naturally be used for riding on horseback, unless it happened to be too rough, because it would be easier going for the horses' hooves. The question whether land thus left beside the *via trita* forms part of the highway or remains vested in the owner of the adjoining property has been before the courts in several shapes, usually in connexion with the rights of pasturage or of cutting herbage. Broadly it may be said that there is a presumption, although a rebuttable presumption, that roadside waste forms part of the highway and vests in the highway authority, and is usable by all persons in the same manner as the *via trita* itself. Even at

Solihull there is not, we imagine, any suggestion of preventing persons by byelaw from riding upon it.

Secondly, there are strips laid down by highway authorities, sometimes between paved footways and the outer boundary of the highway; sometimes between the carriage way and the paved footway. These had become fairly common even before 1925 but, until that year, there was, apart from local Acts, some difficulty in fitting them to general conceptions of highway law. Where, for example, the strips came on both sides of the carriageway, between the carriageway and the footway, there was doubt whether the highway authority had control of three parallel strips (without the intervening ornamental strips), in which case there was a difficulty about the maintenance of these ornamental strips, or whether the ornamental strips formed part of the highway, in which case there was no power either by statute or at common law to keep the public off them: the public using the highway would have the right to walk all over the grass, flower beds, etc. It was to meet these difficulties that Parliament enacted s. 1 of the Roads Improvement Act, 1925, which is, apart from local Acts, the standard power under which grass verges and shrubs, etc., are provided and maintained by highway authorities, either adjacent to the carriageway or on the other side of the footways if any, that is to say, between the footway and the boundary of the highway. Section 1 of the Act of 1925 gives the highway authority full power to provide and to maintain such strips, and to put fences round shrubs and flower beds comprised in them; in the absence of anything to the contrary, it would be a natural inference where such strips were found that they had been provided and were maintained under that section.

Thirdly, it is quite possible for a landowner to set back his fence so as to leave a strip outside it, which strip he does not dedicate to the public as a highway. This is common-place in towns where, in shopping streets, there is often a strip of pavement between the public way and the shop front, over which strip of pavement the public are licensed to pass (not quite invited: *Jacobs* v. *London County Council* [1950] 1 All E.R. 737), in order to get to the shop front, but without their being given any enforceable right such as they have over the highway itself. There is no real legal difference between these paved urban strips and the suburban strips to be found, we understand, in Solihull and certainly in other places, which property owners have left outside their fences to add to the amenities of the roads and thus to the amenity of their own property. We can recall one rural parish where in several roads there is a wide strip of grass outside the garden fences, of which perhaps three feet was originally provided by the highway authority and nine feet measured at right angles to the highway by landowners, the whole twelve feet in width being in practice kept in order by the latter or their tenants, although the highway authority may send a man to mow it once or twice a year. We can recall several bits of land beside country roads in southern England where, without consulting maps and recorded measurements, nobody can say just where the boundary of the highway comes, because a wide strip of grass has been left between *via trita* or paved footpath and the boundary of contiguous property. In some places there are in such strips flower beds, left unfenced—though this must obviously be rare.

The mischief at which the Warwickshire byelaw is aimed is the riding of horses, and also the driving and placing of other animals and of vehicles, on ornamental strips of this kind. The mischief is the same whether the ornamental strip was in the first place provided by the highway authority under s. 1 of the Roads Improvement Act, 1925, or by the property owner, or partly one and partly the other. Nor does it make any difference to the mischief which of the parties maintains the strip. We fancy there are precedents for a similar but more limited byelaw, which does not apply unless the highway authority or local authority maintains the strip, but it seems that common sense demands extending the byelaw, if the byelaw is to be made at all, to all strips of the kind which have to be protected, irrespective of who first provided them and who now maintains them. The byelaw would then protect grass verges, flower beds, shrubs and the like which are private property privately maintained, so long as the property is contiguous to, and more or less indistinguishable physically from, a highway maintainable by the inhabitants at large. We make the reservation in the six next foregoing words, because it could hardly be suggested that the protection given by the byelaw ought to extend to private streets, in the sense of the Private Street Works Act, 1892. There can, however, be highways which are open to the King's subjects as of right for passing and re-passing, but are not repairable by the highway authority on behalf of the inhabitants at large. While there is a case for extending the protection of the byelaw to ornamental strips alongside a highway not repairable by the inhabitants at large, no satisfactory and logical line of division between a highway not so repairable and a private street can for the present purpose be established. We take it that a restriction to highways so repairable is the purpose of speaking in the Warwickshire byelaw of a "public road," an expression to be found in s. 13 (2) of the Local Government Act, 1894.

A further limitation in that byelaw is to roadside strips which are indicated by notices conspicuously affixed. There are many precedents for restricting the field of a byelaw by means of notices. Thirdly, the byelaw ceases to apply if a particular strip is not maintained constantly in good order. While there is every reason to prevent the cutting up through the selfishness of riders and motorists of strips maintained as a public amenity, the reason ceases if the strip loses its amenity character through neglect by those responsible for it. Lastly, the byelaw extends not merely to ridden horses, but to other horses, cattle, sheep and pigs. Goats are perhaps omitted because they are usually solitary and, if tethered in the usual way, can do no harm. Sheep seldom come alone and can cut up ornamental turf, and pigs would be certain to do so. Sheeps' trotters were indeed among the chief tools which created rural England as known to us today, and their very aptitude for effecting economic changes makes them out of place on purely ornamental turf.

NEW COMMISSIONS

NOTTINGHAM CITY

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Mrs. Bettie Melissa Baxter, 34, Caledon Road, Sherwood, Notts.
John Robert Bickerdike, 16, Retford Road, Sherwood, Notts.
Colin Glen Campbell, 18a, Carisbrooke Drive, Mapperley Park, Notts.
Thomas Nelson Cartwright, 6, Clarendon Street, Notts.
Harry Oliver Emmony, 505, Wells Road, Nottingham.
Cyril Theodore Forsyth, 52, Redcliffe Road, Mapperley Park, Notts.
Eric Stevenson Foster, 13, Seaton Crescent, Aspley, Nottingham.
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Albert Edward Greenway, 5, Tuxford Walk, Gordon Road, Nottingham.
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George Henry Wigman, 29, Rose Street, Nottingham.

PREMISES IN DIS-REPAIR: THE PUBLIC HEALTH ACT OR THE HOUSING ACT?

[CONTRIBUTED]

Section 93 of the Public Health Act, 1936, provides for the service of an abatement notice " on the person by whose act, default or sufferance the nuisance continues, or, if that person cannot be found, on the owner or occupier of the premises on which the nuisance arises requiring him to abate the nuisance . . . provided that (*a*) where the nuisance arises from any defect of a structural character the notice shall be served on the owner of the premises . . ." The object of this article is to examine the case where the nuisance arises from dis-repair of a dwelling-house, a form of nuisance with which local government is very familiar.

If the nuisance arises from defective structure, the notice must be served on the owner. The local authority has to decide in the light of such authority as can be found, whether the defect is of a structural character or not, and such evidence as the contents of a tenancy agreement, *e.g.*, as to liability for repairs, is irrelevant at this stage, for the question is one *in rem*. In the absence of decided cases as to what is part of the structure and what is not, divergency of view must be expected. The local authority cannot escape this initial task and must accept the possibility that their decision may be disputed on a point of law before a court of summary jurisdiction on appeal.

If the authority decide that a particular defect is not of a structural character, the next question is upon whom to serve the notice. Shortly stated this is a question, in the case of a house out of repair, of whether to serve upon the landlord or upon the tenant, for one of those two is, except in the most unusual case, the " person by whose act default or sufferance the nuisance arises or continues." In the case of nuisances from, *e.g.*, a dirty house, the tenant is usually clearly responsible, but in a very few cases of nuisances through dis-repair will responsibility be obvious. The owner or the occupier may produce a tenancy agreement to support their views on responsibility. Except in cases where both owner and occupier agree, the local authority will not know which party's claim to accept. (" Agreement " cases in which the service of an abatement notice is needed will scarcely ever arise in normal times, because where the parties agree, repairs will be done before a statutory nuisance arises, but in the present disjointed times they do sometimes arise, because an abatement notice helps the owner, who is willing to do work, in obtaining a civil building licence.)

Whether the local authority is in a position at this stage to decide the issue as one between owner and occupier (landlord and tenant) is questionable. The immediate object is the abatement of a statutory nuisance, not determination of liability for work to be done. This view, that the local authority is not in a position to judge an issue between owner and occupier, is often put forward by local authorities and accepted, no doubt owing to the provisions of s. 290 of the Act. For this reason, probably, the point whether the local authority must try and determine the liability as between landlord and tenant in regard to deciding which of them is the person by whose act, etc., appears to have no direct judicial interpretation. In *Pretty* v. *Bickmore* (1873) 37 J.P. 552, the nuisance consisted of the dangerous condition of the premises demised to the tenant, the tenant being liable to repair under a covenant in the demise. The landlord was held not liable unless he had done some act authorizing the continuation of the dangerous state of the premises. But this case was decided upon common law and insufficient attention seems to have been given to the provisions of the Metropolis Management Act, 1855, which required the particular defect to be kept in repair by the " owners or occupiers," and which, on their default, required the local authority to cause the same to be repaired and to recover the expenses thereof from the owner. The case is indicative that the court in certain circumstances will have regard to private covenants, and is paralleled by the provisions of s. 290 of the Public Health Act, 1936.

This section, which provides for appeal to a court of summary jurisdiction against an abatement notice, rather indicates a duty upon the local authority to discover liability between landlord and tenant in such a case. This is not to say, however, that a court would determine the issue, *e.g.*, upon an application for a nuisance order by the local authority. The *onus* in an appeal against a notice is upon the appellant to bring in other parties. Subsection (3) provides as a ground of appeal " that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of the occupier, and that it would have been equitable for it to have been so served." In such a case, subs. (5) requires the appellant to serve a copy of his notice of appeal on the landlord or tenant (as the case may be) and " on hearing the appeal the court may make such order as it thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any other person towards the cost of the work or as to the proportions in which any expenses which may become recoverable by the local authority are to be borne by the appellant and such other person." The court shall also have regard " as between owner and occupier, to the terms and conditions, whether contractural or statutory, of the tenancy and to the nature of the works required ; and in any case, to the degree of benefit to be derived by the different persons concerned."

A further reference ought to be included. Section 97 of the Act provided that " where a statutory nuisance appears to be wholly or partly caused by two or more persons " proceedings may be instituted against any one of them, or some of them, or all of them, but this applies more where both parties (or all parties) are liable, and not where one is known to be liable though he cannot be found.

The position appears to be that a local authority in seeking to find the person by whose default, etc., cannot afford to refuse to investigate any tenancy agreement produced. In some instances, the confused character of documents produced may make liability between the parties unascertainable—in others the attitude of the parties may confuse the issue. In such cases the authority must decide administratively on the best evidence available. It may be unable to find the person by whose default, etc. ; in that case the authority has a discretion whether to serve upon the owner or occupier. The person served can go to appeal to bring in another person if he wishes. The authority is in no position to serve two persons, *e.g.*, landlord and tenant, with the object of bringing both of them before the court if the notice is not complied with by one of them. The court might well refuse to decide for the local authority the person really liable. The local authority has a duty to decide that question for its own purposes before setting the law in motion.

As statutory nuisances do not normally come before the local authority until their abatement is important or urgent, the provisions of the Public Health Act, 1936, particularly in regard

to houses out of repair, seem rather "old-fashioned" when compared with the other Act passed in the same session as the Public Health Act.

This other Act, the Housing Act, 1936, provides an alternative procedure where the nuisance arises from the dis-repair of the property. Section 9 of the Act empowers a local authority to require the repair of a house which is in any respect unfit for human habitation, but which can be, at reasonable expense, rendered so fit. This notice is to be served upon "the person having control of the house."

The first question is whether the house is unfit for human habitation. This is a matter of fact. Statutory guidance is found in s. 188 (4) of the Act (as amended by s. 1 of and sch. 1 to, the Housing Act, 1949). A local authority's decision is subject to appeal to the county court (under s. 15 of the Act).

"The person who receives the rack-rent of the house whether on his own account or as agent or trustee for any other person . ." is to be deemed the person having control of the house, and the expression rack-rent means rent which is not less than two-thirds of the full annual rent of the house. Here, there is no question as to liability between landlord and tenant, and from the local authority's point of view in this regard the procedure is therefore certain. Doubtless any tenancy agreement properly drawn will have been drawn with due regard to this section; so that, although this part of the Act appears one more for the protection of tenants than are the nuisance sections in the Public Health Act (which are aimed, at any rate in theory, more at public health in the widest sense), nevertheless the landlord is in most cases able to protect himself reasonably well in the tenancy agreement. This is subject to the effect of the Rent Restrictions Acts and, in the case of the smallest houses, of s. 2 of the Housing Act which puts the liability for repair upon the landlord in the case of such houses.

Some local authorities hesitate to take action under the Housing Act because of the provisions of s. 51 of the Act, which give the owner the opportunity of asking the local authority to inform him whether in their opinion the house will after the execution of works be in all respects fit for human habitation and will, with reasonable care and maintenance, remain so fit for a period of at least five years. Obviously, if a local authority intend within a period of five years to include the house within a clearance area or to make a demolition (or closing) order, they would not wish to grant such a certificate, but the difficulty is more apparent than real. A notice to repair is not likely to be served in respect of a house which the authority does not think will last two years—such a house would in any event seldom be repairable at reasonable cost. Moreover, the local authority, if it receive such an application need give no reason for refusing the certificate, and could in a proper case reply that whilst the repair notice included repairs necessary to make the house fit, its remaining fit for any length of time afterwards could not be assured and that further action might have to be taken as circumstances dictated in the future. The authority would be little worse off in this respect than explaining, *e.g.*, on appeal, why an abatement notice was served in respect of defects from dis-repair of such a house.

Summarizing, the position seems to be that in the case of a statutory nuisance arising from dis-repair, procedure under s. 9 of the Housing Act, 1936, is preferable to that under s. 93 of the Public Health Act, 1936, in circumstances where the former provision is equally applicable. An owner is not likely to appeal to the court that his house cannot be made fit at a reasonable cost, and the person having control of the house, if not the owner, is his agent, who collects the rents, etc. The dis-repair under the Housing Act will, in most cases, be from defects which amount to a statutory nuisance. In some cases the converse may not be true, but these cases will be very few. Moreover, the owner is not deprived of any remedy which for the sake of public policy he ought to have. In the majority of cases the repairs will be the landlord's liability in any case (including most of the houses subject to statutory rent control), but, apart from such considerations, the duty of the local authority is intended to be paramount to fairness as between landlord and tenant—they must adjust their relationships as best they can to accord with statutory provision. And, finally, the Housing Act procedure does avoid those vexing uncertainties as to what is and what is not part of the structure, often the only difficulty and uncertainty in acting under s. 93 of the Public Health Act, and as it arises persistently, and is seldom settled in such a way as to form a precedent (*vide* the paucity of reported cases), a means of avoiding it is worth taking.

In practice, trouble comes surprisingly seldom. Perhaps to a great extent the reason for that is the existence of the alternative remedy in most cases, and, therefore, the mutual existence of the provision in two separate Acts may be doing a substantial service to local authorities. It is an ill wind that blows nobody any good.

"EPHESUS."

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Hilbery and Byrne, JJ.)

R. *v.* HEYES

July 17, 1950

Criminal Law—Trial—Plea of Not Guilty—Prisoner in charge of jury—Subsequent admission of guilt—Verdict of jury to be taken.

APPEAL against conviction.

The appellant was charged at Bolton Quarter Sessions on an indictment containing counts for stealing and receiving bicycles. He pleaded Not Guilty to all counts. He asked for legal aid, and was assigned counsel. After the appellant had been given into the charge of the jury, he stated that he desired to withdraw his plea and admit his guilt on the counts for receiving. Counsel suggested to the recorder that the proper course was that the jury should be asked to return a verdict, but the recorder said that that was not necessary, and no verdict was taken. The recorder then sentenced the appellant to three years' imprisonment.

Held, that once a prisoner is in charge of a jury, he can only be either convicted or discharged by the verdict of that jury, and that the failure to take the verdict of the jury and the treating of the appellant's admission of guilt in the presence of the jury as though it were a plea of Guilty rendered the trial a nullity. The court could have ordered a *venire de novo*, but, as the appellant was a man of hitherto good character and had been awaiting the hearing of the appeal for two months, they would not do so, but would merely quash the conviction.

Counsel: *C. E. Goolden* for the appellant; *Corcoran* for the Crown.

Solicitors: *Registrar of the Court of Criminal Appeal*; *Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Byrne, JJ.)

DUNCAN *v.* GRAHAM AND OTHERS

July 14, 1950

Shipping—Passenger steamer—Survey and certificate by Board o Trade—Fishing vessel carrying visitors to warship on one day without charge—Merchant Shipping Act, 1894 (57 *and* 58 *Vict., c.* 60), *s.* 267, *s.* 271 (1).

CASE STATED by the recorder of Berwick-on-Tweed.

At a court of summary jurisdiction at Berwick-on-Tweed infor-

mations were preferred by the prosecutor, C. C. Duncan, a senior marine surveyor employed by the Minister of Transport, charging the defendants, Mrs. Janet Baillie Graham, Peter Struthers, and Tweed Fishing Co., Ltd., with carrying passengers in two fishing vessels belonging to the first and third defendants respectively when such vessels had not been surveyed or certified by the Board of Trade, contrary to s. 271 of the Merchant Shipping Act, 1894, and s. 21 of the Merchant Shipping Act, 1906. The justices convicted and fined the defendants, who appealed to Berwick-on-Tweed quarter sessions, where the following facts were proved or admitted.

The first-named defendant, Mrs. Janet Baillie Graham, was the owner or part owner of the motor fishing vessel, *Dolly Graham*, of which the second defendant, Peter Struthers, was the master. The third defendants, Tweed Fishing Co., Ltd., were the owners of a motor fishing vessel called the *Tweed*. On June 12, 1949, none of the defendants was in possession of a certificate from the Board of Trade as to survey under Part III of the Merchant Shipping Act, 1894, with reference to the vessel concerned. On June 12 the second and third defendants granted the use of the *Dolly Graham* and the *Tweed* respectively to members of the public in connexion with visits which they paid to H.M.S. *Diadem* which was lying off Berwick-on-Tweed. No payment was made in relation to the journeys to and from the *Diadem* by any person carried, and the crews of the vessels received no wages for the journeys in question. Both the vessels were fishing vessels, and before June 12, 1949, neither had been used for the carriage of persons other than the master and crew.

The recorder found that, in so far as the questions for his decision were questions of fact, the two vessels were not " passenger steamers " within the meaning of ss. 267 and 271 of the Merchant Shipping Act, 1894, and that the persons carried in them were not " passengers " within the meaning of s. 267. He, therefore, allowed the appeals. The prosecutor appealed to the Divisional Court.

By s. 271 (1) of the Merchant Shipping Act, 1894 : " Every passenger steamer which carries more than twelve passengers shall (*a*) be surveyed once at least in each year in the manner provided in this Part of this Act ; and (*b*) shall not ply or proceed to sea on any voyage or excursion with any passengers on board, unless the owner or master has the certificate from the Board of Trade as to survey under [Part III] of this Act, the same being in force, and applicable to the voyage or excursion on which the steamer is about to proceed." By s. 267 : " . . . The expression ' passenger ' shall include any person carried in a ship other than the master and crew, and the owner, his family and servants ; and the expression ' passenger steamer ' shall mean every British steamship carrying passengers to, from, or between places in the United Kingdom . . .

Held, that the words " every passenger steamer which carries more than twelve passengers " in s. 271 (1) of the Act of 1894 must be construed as meaning that the steamer must first be a passenger steamer, that is to say, a steamer either habitually or substantially used for carrying passengers, or else constructed as a passenger steamer. The recorder had held that the vessels in the present case were fishing vessels and not passenger steamers, and the court could not interfere with that finding. The appeals must, therefore, be dismissed.

Counsel : *Colin Pearson, K.C.*, and *J. P. Asworth* for the appellant ; *Hinchcliffe, K.C.*, and *Harvey Robson*, for the respondents.

Solicitors : *Treasury Solicitor ; Keenlyside and Forster*, Newcastle-on-Tyne.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

CENTRAL LAND BOARD

Breaking of Party Walls

The Minister of Town and Country Planning has been advised that the operation of knocking a hole in a party wall between two buildings does not constitute development under the Town and Country Planning Act, 1947, provided that the works undertaken do not materially affect the appearance of the premises from outside, and provided also that no material change of use is involved.

Planning permission is, therefore, no longer necessary for such an operation, and no development charge is payable.

Where development charge has been paid in these circumstances, the Central Land Board will make repayment on application.

Paragraph 8 of the Board's Practice Notes on development charges should be read with this modification.

WEST MIDLAND BRANCH, NATIONAL ASSOCIATION OF PROBATION OFFICERS

About ninety residents and a daily average of thirty-five non-resident visitors gathered at the Police College, Ryton-on-Dunsmore, during the week end of June 30 to July 2 for the fourth week-end conference of the West Midland branch, National Association of Probation Officers, which took as its theme " Problem Homes." Interest in the subject was demonstrated by the appeal made by the conference to a wide variety of persons—magistrates, justices' clerks, probation officers, children's officers and voluntary workers from marriage guidance councils.

Lectures were given by Mr. B. E. Astbury, O.B.E., general secretary, Family Welfare Association ; Mr. David Jones, general secretary, Family Service Units ; Dr. Mary Winfield, medical officer to Birmingham's women's welfare clinic ; and the Rev. Leslie Tizard, chairman of Birmingham marriage guidance council.

Mr. J. P. Eddy, K.C., stipendiary magistrate for East Ham and West Ham, then addressed the conference on " The Broken Home and Delinquency."

He said that Mr. Robert Birley, the headmaster of Eton, in his recent Clarke Hall Lecture, in treating delinquency as an immediate problem, expressed the view that the one solution was to be found in the school. He (Mr. Eddy) doubted if there was one solution. But if there was it was to be found in the home. As was said to him recently by a probation officer, delinquency was only a manifestation of defective homes. The true approach to the problem, he thought, was through the probation service. He wanted to see that service strengthened and its status improved. Today there were just over a 1,000 probation officers in the country—about 750 men and 300 women. He was told that there was a need for another 200-250 officers, and that many would put the figure higher than that.

He referred to the fact that a negotiating committee for the probation service had been set up, and he hoped that it would be found practicable to improve the conditions of service of probation officers. He would like to see their title changed. Their duties nowadays ranged over a much wider field than probation. He thought that a more fitting title would be that of " court welfare officers "—to borrow the title suggested by the Denning Committee for the officers who it recommended should be appointed to give guidance to parties who resorted to the Divorce Court or were contemplating doing so.

The conference concluded with a " brains trust," consisting of Mr. J. N. MacGregor Clarkson, stipendiary for North Staffordshire ; Mr. Homfray Cooper, clerk to Southend magistrates. Mr. E. S. Holmes, Birmingham children's officer, and Mr. C. E. Garland, principal probation officer, Birmingham, with Mrs. Moore Ede, J.P., chairman of the Worcester city juvenile court, in the chair.

JUSTICES' CLERKS' SOCIETY

On June 15 and 16, 1950, the Justices' Clerks' Society held its 111th annual meeting at the Town Hall, Royal Leamington Spa. Mr. A. F. Stapleton Cotton presided, and ninety-seven members attended. The proceedings commenced with a welcome by His Worship the Mayor of Leamington (Councillor B. A. Featherston-Dilke, M.B.E., J.P., M.A., M.B., M.R.C.P., C.A.). In his presidential address Mr. Cotton reviewed the work of the council of the society since the last annual meeting. Speaking of juvenile crime, Mr. Cotton said he believed the real solution lay in the home and in greater respect for the law and for the property of others. Another difficulty arose from the number of maladjusted children who required special educational treatment yet who did not receive it through lack of accommodation in special schools. The president ended by expressing the hope that adequate time will be given before they are brought into operation to assimilate the ever increasing number of statutes and statutory instruments upon which clerks to justices are required to advise.

The officers elected for the ensuing year were Mr. James Whiteside (Exeter) as president, and Mr. J. P. Wilson (Sunderland) as vice-president. The honorary treasurer, Mr. L. M. Pugh (Sheffield), and the honorary secretary, Mr. B. J. Hartwell, LL.M. (Southport) were re-elected. After nine years membership of the council and having filled the office of president of the society in 1947/8, Mr. E. W. Pettifer (Doncaster) had decided that the time had come to make way for others and his resignation from the council was received with universal regret. Mr. W. M. R. Lewis (Nottingham) who has been a member of the council for the past three years, did not seek re-election. The thanks of the society were tendered to both. Newly appointed members of the council are Mr. A. W. Dickson (Sutton Coldfield) and Capt. R. H. Langham (Reading).

The society received a visit from Col. W. T. C. Skyrme, J.P., Secretary of Commissions, who spoke of the duties of the Lord Chancellor in relation to magistrates' courts and of the sections of the Justices of the Peace Act, 1949, which mainly concern justices themselves.

The Mayor and Mayoress of Leamington held a reception and dance for members of the society and their ladies; and a performance of "Much Ado about Nothing" at the Stratford Memorial Theatre was greatly enjoyed. By the courtesy of the Shakespeare Trust, the ladies visited the historic places associated with the poet. The four local branch societies entertained their colleagues to luncheon.

The guests at the society's annual dinner included the High Sheriff of Warwickshire, the Clerk of the Peace of Warwickshire, and Mr. Oliver Bell, M.A., J.P., the general secretary of the Magistrates' Association.

CONTROL OF ADVERTISING

In March, 1949, the Pembrokeshire County Council submitted to the Minister of Town and Country Planning an order under reg. 10 of the Town and Country Planning (Control of Advertisements) Regulations, 1948, defining as an area of special control, the whole of the county with the exception of the boroughs of Haverfordwest and Pembroke and the urban districts of Milford Haven, Narberth and Neyland. Objection to the order was made by the Out-door Advertising Industry Advisory Committee, representing a number of advertising organizations, and a local inquiry was held at Haverfordwest in January, 1950. The county council have now been informed that the Minister finds himself able to confirm the order, in so far as it relates to the rural parts of the county, with the exception of the villages of Johnston, Crymmych and Kilgetty. The Minister does not consider that special control would be justifiable in these villages. As regards the borough of Tenby and the urban district of Fishguard and Goodwick, the Minister intends to approve the proposals submitted in the order with modifications, details of which are awaited.

REVIEWS

The Young Lag: A Study in Crime. By Sir Leo Page. London: Faber and Faber, Ltd. Price 18s. net.

There have been many investigations into the problem of crime and its causes, particularly among juveniles and adolescents. Statistics are most commonly used as the source from which to draw conclusions, and there have been many examples of thorough and patient work on these lines. The statistical method appeals strongly to most people, and it has undoubtedly considerable value, but in dealing with human beings, no two of whom are exactly alike, it has obvious limitations, and it must always involve the compilation of tables of figures relating to a large number of people if results are to be at all trustworthy.

In his latest book Sir Leo Page has adopted quite a different approach. Having worked at close quarters among offenders, in court, in prisons or in borstal institutions, for more than twenty years, he has naturally formed certain definite opinions, and in this book he shows how he put those opinions to the test. The greater part of the book consists of the life stories of twenty-three young men, all persistent offenders. He did not choose these twenty-three, because he wanted to be free from any suggestion that he had picked his material to fit his theories. Each young man was selected by the governor of the prison in which he was undergoing sentence, and here it was that the author encouraged the prisoner to tell his story and express his opinions freely. Afterwards, he obtained opinions from one or two prison officials.

The rest of the book records Sir Leo's views and propounds certain reforms as a means of reducing recidivism in the future.

The result is a book of the utmost importance. Like everything Sir Leo Page has written, it shows profound thought, freedom from prejudice, and a wonderful understanding of erring human beings. It is written in the author's well known vivid and graceful style, and the stories, sad as they are, are of absorbing interest. Sir Leo does not mince his words, and when he thinks the young lag has been put on the wrong road by reason of the ineptitude shown by the courts he says so in the plainest possible terms. His chapter on psychology is sure to create a storm in some quarters, but many readers will think it one of the best assessments yet made of the part which is being played by psychologists and psychiatrists in relation to the criminal courts. Sir Leo has unstinted praise for the work of some of these, which he illustrates by some striking cases, but he has no use at all for a considerable number of others who reach extraordinary conclusions and make unpractical suggestions.

In dealing with these young criminals and recording their own stories, Sir Leo constantly reminded himself, as he reminds his readers, that prisoners cannot be relied upon to be always truthful, and therefore he made every effort to check statements and to weigh probabilities. There are, for example, criticisms of certain approved schools, and statements about perfunctory probation work, which are recorded for what they are worth with a word of caution because they may not be true.

In practically all these tragic cases, many with an almost hopeless outlook, there is at least one common feature, namely a complete absence of discipline—no discipline at home, and little at school. Sir Leo believes that deep down the root cause of so much crime among the young is the decline in religious observance and the absence of any ethical standards among parents. Nearly all the young men hated the Army and complained of being ordered about. They had no principles and were utterly selfish, giving not a thought to those whom they injured by their crimes.

It is indeed a sorry picture, but well worth the painting, for the author is no pessimist. He is shrewd in seeing through humbug, but he is always quick to seize upon even a little evidence of something better. He is a firm believer in the wise use of probation, he admires the devotion of many prison and borstal officials, and he is obviously the last to abandon hope of reforming a young criminal. He feels that some courts act on altogether inadequate information about the offender, and are too apt to adopt rule of thumb methods, so that by misplaced leniency or untimely severity, they may confirm the young criminal in his evil ways. While he does not believe in special tribunals for sentencing, he advocates a deeper study of methods of punishment and treatment by all judges and magistrates. As to the determined criminal, he is no sentimentalist or theorist; society must be protected, and perhaps the best way is the imposition of an indeterminate sentence with a prescribed minimum.

One of the pleasantest features of this fascinating book is the impression of the author himself. He is writing about other people, but about himself, but he cannot conceal himself entirely from his readers. We see him kindly and sympathetic, alert and observant, realizing the bad but looking for the good, ready to go to any trouble if only he may be the means of calling a halt to a career of crime and of interesting the criminal in better things.

A Primer of Public Administration. By S. E. Finer. London: Frederick Muller, Ltd. Price 6s.

Mr. Finer is professor of political institutions at the University College of North Staffordshire, and a fellow of Balliol. He has set himself to produce a primer which will give serious students as much information as can be compressed in 160 pages, on the subject of English public institutions. The work is, apparently, one of the first to be issued in a new *Man and Society* series, and makes a good beginning. Book I, "the Administrative Revolution," speaks of the great change of outlook in England and elsewhere, which has occurred in the first half of the century. When Edward VII succeeded, the normal attitude might be described as being that public authorities were a nuisance, which had to be endured as a precaution against evils otherwise certain. Fifty years later, they are not merely taken for granted but are assumed to be omnipresent, and to be concerned to cure or prevent every form of human ill. From an explanaiton of this change, the author leads up to the predominant position in this country of the Cabinet; then to Government Departments, and the arrangement of administrative bodies outside Whitehall, and to the central—local relationship. There is a brief description of the central and local services and the methods by which public accountability is insured. There are minor errors, such as are almost unavoidable in an academic writer who has not personally worked the machinery he describes, and the emphasis is not at all points that which we ourselves should have adopted. But there is a deal of information, which the ordinary reader will not find readily elsewhere, for example on the subject of Treasury control and the internal organization of governmental services, and the inaccuracies are not important, when viewed in relation to the quantity of matter. The author shows a happy faculty for chapter headings drawn from Swift; what could hit off English institutions better than selected passages from *Laputa* or *A Tale of a Tub*? He has also a pleasing acquaintance, with which we should not have credited Balliol, with literary byways such as *Jurgen*, and *The King of Caractacus*. Some references to the courts, as at p. 157, suggest that he has not yet mastered the English judicial system, while such sentences as "all these reflect the increasing diseconomies of scale," suggest that he is not yet so much at home in writing English as in reading it, but he has evidently read vastly in blue books and white papers, and knows how to bring together bits of

information which the student would not otherwise recognize as being related.

The Journal of Criminal Science, Volume 2. Edited by L. Radzinowicz and J. W. C. Turner. London: Macmillan and Co., Ltd. Price 18s. net.

The Journal of Criminal Science, of which this is the second volume, is published under the auspices of the Department of Criminal Science, Faculty of Law, University of Cambridge, and takes the form of a collection of papers by experts on various aspects of criminal law and its administration, sometimes written by lawyers, sometimes by officials and sometimes by criminologists.

The present volume is almost entirely devoted to a symposium on the Criminal Justice Act, 1948, although opportunity has been taken to include two additional essays on foreign criminal jurisprudence, one entitled *Pas de Peine sans Culpabilitié* by Paul Logoy, and the other *L'Element Intentionnel dans le Meurtre en Droit Francais* by Joseph Magnol.

It may seem a little late to produce articles on the Act of 1948, which has been in force for some time, but this is not really the case, because the various writers are not simply explaining or annotating the statute, but are considering it in the light of past legislation and possible further progress. Each puts his particular subject in its historical setting, realizing that the new statute is one more landmark on the long road of penal reform, and discusses it from the point of view of an expert, whether as lawyer, criminologist, official or social worker. That is what makes all of these essays pleasant reading, as they certainly are.

Here is a list of the articles and their authors :—" The Criminal Justice Act and Prison Administration," by L. W. Fox, chairman of the Prison Commission ; " The Probation System under the Criminal Justice Act," by F. J. O. Coddington, LL.D. ; " Fines and their Enforcement ; Changes in the Law," by E. Cordes, O.B.E., formerly of the Home Office ; " The Effect of the Criminal Justice Act on the Borstal System," by Margery Fry, LL.D., J.P. ; " The Treatment of Persistent Offenders," by Dr. Max Grunhut, University Lecturer in Criminology, Oxford ; " Medical Aspects of the Criminal Justice Act," by Sir Norwood East, M.D., F.R.C.P., formerly H.M. Commissioner of Prisons ; " Changes in Criminal Procedure," by J. C. Jolly, K.C., chairman of the Lancashire Quarter Sessions ; " Fingerprints," by Superintendent F. R. Cherrill, M.B.E., of New Scotland Yard ; and " After-care and Supervision under the Criminal Justice Act," by Frank Dawtry, secretary, National Association of Probation Officers.

Magistrates and others connected with magistrates' courts will be glad to profit by Mr. Jolly's exposition of some sections of the new statute, especially ss. 28 and 29. They will be interested in Miss Fry's views about the changes in the law relating to borstal training, not least by her misgivings as to the possibility that some young people may go to borstal who ought not to be there, and that others may be transferred to prison by administrative action. Dr. Coddington, so well-known as a writer and speaker, draws on his considerable experience as a stipendiary magistrate and is able to approve of most of the changes in the probation system, some of which, as he says, regularize practices that have been adopted informally by some courts for years past. Mr. Cherrill's article is of interest as showing, among other things, how fingerprint identification has served the ends of justice by clearing the innocent as well as by convicting the guilty.

We have mentioned these few articles in particular as being perhaps the most likely to appeal to our readers. But every article is authoritative and important, and each will repay study and reflection.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 45.

BETTING ON LICENSED PREMISES

A sixty-three year old licensee appeared at Dudley magistrates' court on May 4, 1950, charged with permitting his licensed premises to be used for the purpose of betting contrary to s. 3 of the Betting Act, 1853. It was alleged that the offences were committed on divers dates between November 25, 1949, and February 5, 1950. The twenty-nine year old son of the licensee was charged with aiding and abetting and a sixty-three year old female bookmaker's runner was charged with using the premises for the purpose of betting upon the same dates contrary to s. 3 of the Betting Act, 1853.

For the prosecution, evidence was given that a police constable dressed in overalls and with dirty hands and face, spent seven Saturday lunch hours in the public house, and that upon several occasions during his visits he had seen betting slips and money being passed to the female runner in the presence of the defendant licensee and his son. He had also seen the winners of a card game and a domino game given money by the losers. On one occasion he had seen the licensee's son accept a piece of paper and a £1 note and he had seen him pass them and some slips to the runner. On February 4 he had seen the licensee borrow a pencil from the runner and write on a piece of paper which he gave to her together with some money and later the same day a police sergeant entered and read a warrant.

A police sergeant stated that he found in the runner's handbag fourteen betting slips and £4 10*s*., and the runner told him that she did not deny taking bets. The licensee had told him that he knew nothing about it and that he was a bit deaf. The son had said that when he had seen anything like betting going on he had told those customers responsible to discontinue it and leave the premises.

Corroborative evidence was given by another police officer who stated that on one occasion, when he visited the bar, the atmosphere was like a bookmaker's office but neither the licensee nor his son took any notice. All three defendants pleaded not guilty, but the runner gave no evidence on her own behalf. Both the licensee and his son denied that they had seen betting taking place.

The justices convicted all three defendants and fined the runner £20, with an alternative of two months' imprisonment. The licensee was fined £30, with an alternative of three months' imprisonment and his son was fined £10, with the alternative of one month's imprisonment.

[The writer is much indebted to Mr. C. W. Johnson, chief constable of Dudley, for the very full information he has supplied in connexion with this case. Comment upon this case is to be found at p. 430 *ante*.]

R.L.H.

PENALTIES

Oxford—June, 1950—receiving 10*lbs*. of liver knowing it to have been stolen (two defendants)—each fined £3. Defendants were meat porters aged twenty-seven and twenty-three respectively.

Oxford—June, 1950—assault—fined £5 and to pay £1 costs. Defendant, a university graduate, married and having one child, dressed up in women's clothing and went to a ladies' lavatory where he rubbed a cotton wool pad which had been impregnated with chloroform across the face of a telephonist as she was leaving the lavatory.

Neath—June, 1950—causing unnecessary suffering to a dog—fined £3 and to pay one guinea costs. Defendant, an unemployed farmer, was asked by a woman to destroy her dog. He complied by hanging it.

West London Police Court—June, 1950—unlawfully confining wild birds in cages which did not permit them to stretch their wings. Fined 8*s*. To pay £2 2*s*. costs. Defendant, a one-legged ex-service man stated to be living on his pension, kept a linnet with a wing span of about ten inches in a cage measuring seven and a half inches long and eight and a half inches high and four and a half inches deep. The magistrate ordered the bird to be released. Defendant had similarly caged two chaffinches.

Bilston Juvenile Court—June, 1950—three defendants—(1) carrying a gun without a licence, (2) discharging a missile to the injury of a person—(1) each defendant to pay 4*s*. costs, (2) two boys to pay £2 each. One boy to pay £1. Two boys of thirteen and one of twelve fired air rifles at two sixteen year old youths armed with catapults. One of the sixteen year olds was struck in the eye with a pellet and spent five weeks in hospital at the end of which time he was still blind in one eye.

Oxford—June, 1950—assault occasioning actual bodily harm—two defendants—each fined £19 and to pay £1 5*s*. costs. Defendants, a thirty-five year old electrical fitter and a twenty-six year old lorry driver, attacked an American citizen living in this country. One held him down while the other hit him with a brick and kicked him. The American suffered concussion, a fracture of the frontal bone of the skull and a two and a half inch cut over his left eye.

Bristol—June, 1950—(1) stealing a roll of tapestry value £30, (2) stealing a roll of tapestry value £21—three months' imprisonment on each charge to run consecutively. Defendant, a man of forty-seven, who had formerly been an upholsterer, asked for an offence of receiving three rolls of hessian to be taken into consideration.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

JUVENILE OFFENDERS

Lieutenant-Colonel Sir Thomas Moore (Ayr) asked the Secretary of State for the Home Department whether he would consider the issue of a circular to magistrates giving guidance as to their attitude towards juvenile offenders charged with gross cruelty to animals and birds.

The Secretary of State for the Home Department, Mr. Chuter Ede, replied that it was for magistrates to exercise their powers in the light of the particular circumstances of each case, and it would not be right for him to issue any guidance on the lines suggested.

Sir T. Moore: "Is the right hon. Gentleman aware that when some unspeakable little hooligans were charged recently with stoning some ducks to death, all the magistrates could find to say in condemnation was, 'You naughty little boys'? How can that phraseology bring home to them the wickedness of their offence? Is not it within the duty of the right hon. Gentleman to advise the magistrates as to their duty?"

Mr. Ede: "No, Sir. I think we must assume that magistrates will bear in mind the particular circumstances of each case."

CRUELTY TO CHILDREN

Mr. Somerville Hastings (Barking) asked the Secretary of State for the Home Department what action he proposed to take upon the report of the Departmental Working Party which he appointed to inquire into cruelty and neglect of children in their homes.

In reply, Mr. Ede said that the Government had reached the conclusion that the present need was not for an extension of statutory powers, or for inquiry by a departmental committee, but for the fully co-ordinated use of the local authority and other statutory and voluntary services available. The Government had accordingly decided that the right course was to ask local authorities to introduce arrangements designed to ensure the action was co-ordinated to make the most effective use of the available resources, statutory and voluntary alike. That might well be achieved by designating an officer of the local authority whose task would be to ensure such co-ordination. By that means, significant cases of child neglect and all cases of ill-treatment coming to the notice of any statutory or voluntary service in the area could be considered, and agreement reached as to how the local services could best be applied to meet the need.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, July 18

BRITISH TRANSPORT COMMISSION BILL, read 3a.

HIGHWAYS (PROVISION OF CATTLE-GRIDS) BILL, read 3a.

HOUSE OF COMMONS

Monday, July 17

ALLOTMENTS BILL, read 3a.

Friday, July 21

PUBLIC UTILITIES STREET WORKS BILL (LORDS), read 2a.

MEDICAL BILL (LORDS), read 3a.

PERSONALIA

APPOINTMENTS

Mr. Ralph George Fleeton, assistant solicitor to the urban district council of Hornchurch, has been appointed second assistant solicitor to the borough of Southgate. Mr. Fleeton is twenty-eight and served in the Indian Army during the war, being demobilized with the rank of major. The previous holder of the post, Mr. Leslie Wilfred Way, has been appointed deputy clerk of the urban district council of Chertsey.

ANNIVERSARY

Mr. R. M. Middleton, O.B.E., town clerk of Lancaster, has recently completed twenty-five years' service as town clerk of that city. He entered public service in the town clerk's department, Carlisle, in 1909, under the late Mr. A. H. Collingwood, O.B.E., with whom he subsequently served his articles. He served as town clerk of Aylesbury from 1922 to 1925.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Byelaw—*Prosecution for offence against—Proof of byelaw.*

Three persons were jointly charged with an offence against a byelaw and two pleaded guilty; the third did not appear. I advised the magistrates that the byelaw required proof, and that no proof of the byelaw had been offered, and that they should dismiss the case. Was this correct? One of the magistrates raised the question of whether if all had pleaded guilty the magistrates could have convicted them without the byelaw being proved. Can you give me your view on this with, if possible, an authority? STAL.

Answer.

We think the advice of the learned clerk that the byelaw must be proved was correct. It was undoubtedly necessary in the case of the absent defendant, and we consider that, on the whole, the better opinion is that it must be proved even when a defendant pleads guilty.

It might be argued that when a defendant pleads guilty he admits not only the facts alleged but also the existence of a law creating an offence, and that it is no more necessary to prove the byelaw than it is to prove the facts. This is convenient, and we have no doubt that it is constant practice which goes unchallenged. When the question is raised, however, we think it must be answered that a byelaw, unlike a statute, must be proved before anything can be done in pursuance of it, and that the court must always satisfy itself that an offence known to the law has been committed, even though the defendant pleads guilty. We admit that the point is debatable, and that we took the other view in an answer we gave at 100 J.P.N. 44. It seems to us that either view is quite reasonable and that only the High Court can settle the point, but on careful consideration we feel that the stricter view should be taken unless and until a High Court decision authorizes justices to act without proof of the byelaw when there is a plea of guilty.

We suggest that instead of dismissing a case out of hand the better course is to give the prosecution an opportunity of re-opening the case and repairing the omission. *See* the observations of Cave, J., in *Hargreaves and Hilliam* (1894) 58 J.P. 655.

2.—Elections—*Local government elections—Polling stations.*

This county borough and a certain portion of the adjoining county together form a parliamentary division and the county borough itself is divided into wards. Having regard to the provisions of s. 22 (3) of the Representation of the People Act, 1949, and r. 22 (2) of the Local Elections Rules, must the polling stations for local elections be the same, in the absence of special circumstances, as those utilized at parliamentary elections?

If so, what would be deemed to be "special circumstances"? APAR.

Answer.

No; what the section requires, and the rule provides, is that the station shall be within the "place" (except as otherwise provided) but it can be in a different structure from that used at the parliamentary election.

3.—Landlord and Tenant—*Furnished house—Reference to tribunal after notice to quit.*

If the tenant of a furnished house wishes to apply to the tribunal for a reduction in rent is it necessary that he should have referred the contract to the tribunal before having received notice to quit? Is he too late after notice to quit has been served? (Furnished Houses (Rent Control) Act, 1946, s. 5.) ATRI.

Answer.

No. Section 5 extends the period of operation of a notice to quit served after the reference. It does not affect a notice to quit served before the reference, nor does it affect the power, and duty, of the tribunal in dealing with the reference. Obviously, a tenant who has already received notice to quit has not much to gain under the Act of 1946 by referring the contract, but that is another matter. Section 11 of the Act of 1949 may be helpful.

4.—Landlord and Tenant—*Small Tenements Recovery Act*, 1838—*Venue—Council houses—District extending into several petty sessional divisions.*

Parts of X, Y, and Z petty sessional divisions, all in the same county, are included in this rural district. Proceedings under the Small Tenements Recovery Act, 1838, are most conveniently brought in the petty sessional division of X, owing to the frequency of the sittings, the proximity of the council's offices, and the fact that X is the centre of communications for the whole rural district. Can the council bring proceedings under the Act in the petty sessional division of X, in respect of a property physically situate in the petty sessional division of Z? The Act says: "It shall be lawful for the justices acting for the division district or place within which the said premises or any part thereof shall be situate . . ." to issue a warrant. Attention is drawn to *R. v. Beckley* (1888) 52 J.P. 120 and *Caistor U.D.C. v. Taylor* (1907) 71 J.P. 310. The jurisdiction does not appear to be limited to justices of the division alone as under the Bastardy Act; and the words "district division or place" all appear to be alternative.

ALC.

Answer.

We agree. We dealt with an analogous question, and considered the case law, at 109 J.P.N. 191. Practical Point 4, *ibid.*, related to rates, but the legal result is in our opinion the same. In practice, we advise proceeding in the court most convenient to the tenant, which may not be that for his own division.

5.—Larceny — *Tenants of houses taking materials belonging to landlord and using them on landlord's premises.*

May I please have your opinion on a matter which concerns very many local authorities.

A contractor contracts to build houses for a local council. Under the terms of his contract all materials delivered by him to the site become the property of the council, but the contractor is responsible for any loss or damage. Council tenants are helping themselves surreptitiously to bricks and timber and using them to construct walls, fences, huts, etc., on the land they are renting. It is clear that if they were not council tenants, or if, being tenants, they disposed of the property in some other way, they would be guilty of larceny.

Do they, in fact, commit any criminal offence? SER.

Answer.

In our opinion, there is a case of stealing to be answered. The fact that the materials are taken surreptitiously is some evidence of fraudulent intent and of the absence of any *bona fide* claim of right. If the materials are used to make walls or fences which the council did not intend to have made, the council is permanently deprived of those materials as building materials, and we do not think the fact that they are used on the council's property affects the question of fraudulent taking, or negatives the intent permanently to deprive the council of those materials, which will doubtless have to be replaced by others at the expense of the contractor.

6.—Licensing—*Permitted hours—Variation between summer and winter months where no direction given under proviso to s. 1 (1) of Licensing Act*, 1921—*Whether permissible.*

The licensing justices of the above division have agreed to consider a proposal for the variation of the licensing hours for this division from 11 *a.m.* to 3 *p.m.* and 5 *p.m.* to 9 *p.m.* to 11 *a.m.* to 3 *p.m.* and 6 *p.m.* to 10 *p.m.* at the adjourned annual licensing meeting.

I shall be glad to have your opinion as to whether the licensing justices could make an order to vary the licensing hours as above mentioned for part of the year covering the holiday season, say from May 1 to September 30. It appears having regard to the Act of 1934 that the justices could extend the licensing hours by adding half an hour in accordance with s. 1 (1) (*b*) of the Act of 1921 for part of the year but the proposal which the licensing justices have agreed to consider is for the variation of licensing hours as above mentioned under s. 1 (2) of the Act of 1921 and I am not clear that the justices could agree to the proposed variation for part of the year only.

NASO.

Answer.

In our opinion it is *ultra vires* the licensing justices to make an order under s. 1 (2) of the Licensing Act, 1921, fixing the "ordinary" permitted hours on week days with a difference between the summer and the winter months.

We are unable to give a different meaning to the expression "week days" as it occurs in s. 1 (2) of the Act of 1921 from that which was given to the same expression as it occurs in s. 1 (1) of the Act by the decision in *R. v. Sussex JJ., Ex parte Bubb* (1934) 50 T.L.R. 375, 410; 98 J.P.N. 290. The decision in this case was nullified, in its particular application, by the Licensing (Permitted Hours) Act, 1934, but this Act is not wide enough to bring within its scope the permitted hours required to be fixed by the licensing justices under s. 1 (2) of the Act of 1921. *See* also the Scottish case of *Glasgow and District Restaurateurs' & Hotel Keepers' Association v. Dollan* (1941) S.C. 93; (1940) Brewing Trade Review Law Reports 3.

7.—Local Government Act, 1936—*Disability for voting—Remoteness of interest—Future salary scales.*

I am a councillor of a non-county borough, which is not an excepted area under the provisions of the Education Act, 1944, and one of my council's representatives upon the divisional education executive and the local schools managers.

My council received from the Association of Municipal Corporations a communication asking for their views about an agreement upon teachers' salaries, to take effect upon termination of the existing Burnham agreement. When the communication was before my council the mayor, acting upon the advice of the town clerk, ruled that by reason of my wife's employment as a teacher under the county council I could neither vote nor take part in the discussion.

I would appreciate your view on this matter. APP.

Answer.

We are inclined to the view that, at the present stage, when councils are being asked to consider generally what line the A.M.C. shall be asked to take on their behalf, the matter is too remote for an interest, arising by virtue of s. 76 (3) of the Local Government Act, 1936, in your wife's employment to disable you under s. 76 (1). But it is on you that the responsibility rests by virtue of s. 76 (6), and if you wish to take part in these discussions you may think it wise, if only *ex cautela*, to apply to the Minister of Health under subs. (8) upon the second ground mentioned in that subsection.

8.—Magistrates—*Practice and procedure—Corporation charged with offence to which s.* 17, *Summary Jurisdiction Act*, 1879, *applies.*

With reference to P.P.'s 5 and 6 at p. 146 *ante*, relating to " election " under s. 17 of Summary Jurisdiction Act, 1879, can you please give me any authority for saying that a limited company loses its right of election under the Criminal Justice Act, 1948, if it fails to appear on the hearing, as, apparently, does a personal defendant under s. 17 of the 1879 Act as amended ?

I believe the Criminal Justice Act, 1925, has some provisions as to the right of a limited company to elect to go to trial, but I am not sure how far that right is affected by the 1948 Act ; I feel sure you will be able to assist me. S.U.D.

Answer.

The matter was already dealt with in s. 33 of the Criminal Justice Act, 1925, and the case of non-appearance by representative as provided by that section is specifically covered. The Act of 1948 does not affect this particular point. The position is stated in note (*p*) on p. 92 of *Stone* as follows : " where a corporation is charged, a claim to be tried by a jury may be made on behalf of the corporation by its representative, and where the corporation does not appear by a representative or no such claim is made the case may be dealt with summarily."

9.—Private Street Works—*The Public Health Acts Amendment Act*, 1907, *s.* 19—*Recovery of expenses.*

My corporation have, during the past two years, had occasion to apply s. 19 of this Act to certain streets in the borough. In many cases the ownership of particular properties has changed between the time when notices were served upon the individual owners under subs. (1) and the time when a final demand was served under subs. (2). In addition very occasionally it is found on service of a final notice demanding the amount due under subs. (2) that a person believed to be the owner at the time of the service of the first notice under subs. (1) was, in fact, never the owner of a particular property. If the expression " owners in default " in subs. (2) means that individuals must be owners within the definition in s. 4 of the Public Health Act, 1875, and that " in default " means that they must have defaulted on a notice served on them under s. 19 (1), then if property has changed hands between the service of the respective notices mentioned above it appears that the corporation have no remedy for the recovery of the amount owing other than that of enforcing the charge which would have been registered in Part II of the Local Land Charges Register. In one particular case, although ownership was not disputed at the time of the service of the first notice, the firm upon whom such notice was served now allege that the property has been sold to the trustee of a religious body. Please advise on the following points :

(*a*) Generally, upon the true meaning of the expression " owners in default " mentioned in s. 19 (2).

(*b*) In the case of a change of ownership subsequent to service of the first notice, is the corporation entitled to recover from the owner for the time being ? (It is agreed that at all the material times, an appropriate entry has appeared in either Part I or Part II of the Local Land Charges Register).

(*c*) Is there any corresponding exemption from expenses arising under this Act comparable with the exemption in s. 16 of the Private Street Works Act, 1892.

(*d*) In the case of an individual owner who has carried out the work prescribed in the notice served under s. 19 (1), is the corporation entitled to relieve him of any liability for the final expenses ?

ANGE.

Answer.

(*a*) In our opinion, a person cannot be in default unless he has under due authority been required to do something. Section 19 of the Act of 1907 does not authorize a requirement except upon the person who is owner at the time when the repairs are necessary and the notice under subs. (1) is served.

(*b*) Section 257 of the Public Health Act, 1875, carries the right of recovery against the person as distinct from the property forward to the time of completion of the work.

(*c*) No. Section 16 of the Act of 1892 corresponds to s. 151 of the Act of 1875, which stands apart from s. 19 of that of 1907.

(*d*) We are not sure what is in mind, but *see* s. 15 of the Private Street Works Act, 1892, if it is under that Act that final expenses are incurred.

10.—Real Property—*Water—Abstraction at higher level.*

It is proposed to use a land spring in a certain field to supply a village with water. The farmer who owns the adjoining field objects to the proposed scheme on the grounds that the overflow from the spring is the only source of water supply for the cattle grazing in this field. In the winter months there would be an adequate overflow for his cattle but such a supply could not be guaranteed in the summer period. The proposed water mains do not run through the neighbouring field—if that was the case the mains could be tapped in that field. Can this neighbouring farmer claim to be a riparian owner of the water, and could he take action if the water is stopped ? There is another river flowing within twenty yards of the field where there is an ample supply of water all the year round. AQUAN.

Answer.

The last sentence of the query is rather puzzling. It speaks of " another river." No river has been previously mentioned : does this sentence mean that the overflow from the spring follows a defined channel forming a small river or brook ? This may be important, but we do not think the farmer's being able to water his cows at the other river (if he can, *i.e.*, if the intervening twenty yards is in his farm) affects his rights, if any, in respect of the water from the spring, which rights would arise under a different title. The water from the spring could reach him in at least four ways, *viz.*, over the surface without a defined channel ; below the surface, emerging in his land ; by a natural brook ; or by an artificial channel. His rights may differ accordingly and it is therefore impossible to say, upon the information given, what rights he has. If the water flows down to him without forming a defined channel above ground, it is a mere natural incident of ownership of his farm. If it forms a natural brook, he has the natural rights of a riparian owner ; if it is conducted in an artificial channel he may have further rights by way of easement. In the first two cases the owner of the spring is entitled to dispose of the water even though this prevents the overflow : *Chasemore* v. *Richards* (1859) 23 J.P. 596. If there is a natural brook, the downstream riparian owner has a right to its continued flow in its natural condition, less such water as the upstream owner abstracts for use on his own land : *Swindon Waterworks Co.* v. *Wilts Canal Co.* (1876) 40 J.P. 804, and therefore *prima facie* has a right to compensation if the water be diverted for public use. If there is an artificial channel carrying the overflow to the lower land, the respective rights of the parties may, assuming that no express agreement between them can be found, depend upon the purpose for which the channel was made ; if for relief merely of the higher land, then the lower land will probably not have acquired a right to it by prescription : *Mason* v. *Shrewsbury and Hereford Railway* (1872) 36 J.P. 324 ; if for the benefit of the lower land, then there will probably be a prescriptive right and therefore, here, a claim to compensation : *Watts* v. *Kelson* (1871) 35 J.P. 422. As will be seen, the possibilities are complex and depend upon old case law and on the facts. The legal advisers on both sides should aim at reaching a solution by agreement.

11.—Summary Proceedings—*Exclusive remedy—Limitation of time.*

Certain facts have been reported which appear to indicate an offence against s. 7 of the Building Materials and Housing Act, 1945, for selling a house above the controlled price in the licence. The sale took place over two years ago but the purchaser did not report the facts to the local authority until a week ago. The Act states " shall be liable on summary conviction." Will you please either confirm the view of the local authority that because of the time limit of six months no proceedings can be successfully taken, or indicate in what way proceedings can be taken. The sale is not by the original builder. ABM.

Answer.

The unfortunate delay by the purchaser has made proceedings impossible.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

THE LANCASHIRE No. 5 COMBINED PROBATION AREA

Appointment of Male and Female Probation Officers

VACANCIES exist for a full-time male Probation Officer and a full-time female Probation Officer in the above Combined Area, which comprises the County Borough of Burnley, the Boroughs of Colne and Nelson, the Petty Sessional Divisions of Burnley (County), Colne (County), and Rossendale.

The appointments will be subject to the provisions of the Probation Rules, 1949, and successful applicants will be required to pass a medical examination.

Applications, stating age, qualifications, experience, and present salary (if already serving), together with the names of not more than two persons to whom reference may be made, must be sent to me not later than August 12, 1950.

WM. J. C. PERKINS,
Clerk to the Combined Area Committee.

Borough Justices' Clerk's Office,
Town Hall, Burnley.

BOROUGH OF CHELTENHAM

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with Grade A.P.T. V(a) (£550 × £20—£610 p.a.), the commencing salary being fixed having regard to the experience and qualifications of the person appointed.

Applicants, preferably with a knowledge of Local Government and of the general legal work of a Town Clerk's Department, should have had experience in conveyancing and advocacy.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, accompanied by copies of two recent testimonials, should reach the undersigned not later than August 9, 1950.

F. D. LITTLEWOOD,
Town Clerk.

Municipal Offices,
Cheltenham.

COUNTY OF HERTFORD

Petty Sessional Division of Watford

Justices' Clerk's Cashier

APPLICATIONS are invited for this appointment from persons experienced in fines and fees accounting, Collecting Officer's accounts, process for arrears and the general work of a Justices' Clerk's Office. Applications, stating age, qualification and experience, should reach the undersigned, together with three copies of recent testimonials, not later than Saturday, August 12, 1950. The annual salary will be within Grade III of the A.P. and T. Division of the National Joint Council's Scales for Local Authorities. (£450 by £15 to £495 per annum).

The appointment will be subject to the Local Government Superannuation Act, 1937.

D. W. WHITAKER,
Clerk to the Justices.

The Court House,
Clarendon Road,
Watford, Herts.

COUNTY BOROUGH OF STOCKPORT

Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor at a salary in accordance with the National Joint Council's Scale as under :

(*a*) After admission and on first appointment within A.P.T. Division, Grade Va (£550-£610 per annum).

(*b*) After two years' legal experience from date of admission within A.P.T. Division, Grade VII (£635-£710 per annum).

Forms of application and conditions of appointment may be obtained from the undersigned. Local Government experience is desirable but not essential.

Applications on the official form with copies of two recent testimonials must be received by me not later than Saturday, August 19, 1950.

Canvassing will be a disqualification.

J. HAYDON W. GLEN,
Town Clerk.

Town Hall,
Stockport.
July 19, 1950.

ISLE OF ELY COUNTY COUNCIL

Children's Officer

APPLICATIONS are invited for this appointment at a salary in Grades V(a) and VI of the A.P.T. Division of the National Salary, Scales and Conditions (£550-£660 per annum).

Applicants should possess administrative experience, a Social Science Diploma or other appropriate qualification as envisaged by the Curtis Report and have had considerable experience of work with children. The person appointed will be the Executive Officer in the Department of the Clerk of the Council responsible for carrying out the functions of the Council referred to in the Children Act, 1948. The duties will necessitate the use of a car and travelling allowances will be paid in accordance with the County Council's rate.

The appointment will be subject to a medical examination for the purposes of the Local Government Superannuation Act, 1937, and to termination by two months' notice in writing on either side.

Applications, on forms to be obtained from the undersigned, must be received not later than August 19, 1950.

R. F. G. THURLOW,
Clerk of the County Council.

BOROUGH OF FINCHLEY

Appointment of Chief Assistant Solicitor, Town Clerk's Department

APPLICATIONS are invited for the appointment of Chief Assistant Solicitor at a commencing salary according to experience within Grades VII/VIII of the Administrative, Professional and Technical Division of the National Conditions of Service (£635 × £25—£760) plus £30 London weighting. Municipal experience is desirable.

Applications, giving full particulars of educational qualifications, appointments held and experience, should be addressed to the undersigned, accompanied by copies of three recent testimonials, by not later than August 9, 1950.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination by the Council's Medical Officer of Health.

Canvassing will disqualify.

R. M. FRANKLIN,
Town Clerk.

Municipal Offices,
Finchley, N.3.
July 20, 1950.

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